

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 129

THE HEIRS OF SAMUEL GARLAND, DECEASED,
APPELLANTS,

vs.

THE CHOCTAW NATION.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 12, 1919.

(27,171)

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SUPREME COURT OF THE UNITED STATES.

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No. 416.

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vs.

THE CHOCTAW NATION.

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1. Petition and Exhibits.

Filed Sept. 3, 1908.

In the Court of Claims,

No. 30252.

THE HEIRS OF SAMUEL GARLAND, Deceased, Plaintiffs,

vs.

THE CHOCTAW NATION, Defendant.

To the Honorable Chief Justice and Judges of the Court of Claims:

Your petitioners, the heirs of Samuel Garland, deceased, respectfully represent:

1. That by act of Congress approved May 29, 1908, in section 5, it was provided as follows:

"Sec. 5. That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the Governor of the Choctaw Nation, and the Attorney-General of the United States shall appear and defend in said suit on behalf of said Nation." (35, Stat. L., Pt. 1, P. 445.)

2. That Samuel Garland was a member of the Choctaw tribe of Indians of the Choctaw Nation, Indian Territory, and on the 9th day of November, 1853, there was created by the Legislative Assembly of said Choctaw Nation a delegation authorized and empowered by said act to settle all of the unsettled business between said Choctaw Nation and the United States; that said delegation appointed by the aforesaid act of the Choctaw Council was composed of the following members: Samuel Garland, Peter P. Pitchlynn, Israel Fulson, and Dixon W. Lewis. A copy of said act is hereto attached, marked Exhibit "A," and made a part hereof.

3. That acting under said act of the Choctaw Council said Samuel Garland and the other members of the delegation heretofore appointed by said act of the Choctaw Council entered into negotiations with the United States Government for a settlement of the unsettled

claims pending between the Choctaw Nation and the United States arising out of the treaties of 1820 and 1830 between the United States and the Choctaw Tribe of Indians.

The treaty of 1820 was entered into at Doakes Stand on October 18th, 1820 (7 Stat. L., 210). The treaty of 1830 was entered into at Dancing Rabbit Creek, September 27, 1830 (7 Stat. L., 333). It was claimed by the Choctaw Nation that the United States Government had not complied with several of the provisions of the aforesaid treaties, and as a result of said negotiations on the part of the

Choctaw Nation through its delegation, to wit: Samuel Garland et al., a new treaty was entered into between the Choctaw Nation and the United States Government at the City of Washington on June 22, 1855, under the terms of said treaty provision was made for the settlement of all disputed claims between the Choctaw Nation and the United States, said treaty being signed on the part of the Choctaw Nation by Samuel Garland and the other three delegates appointed under said act of the Choctaw council; Sections 11 and 12 of the treaty of June 22, 1855, provided for the settlement of all disputed claims between the Choctaw Nation and the United States, said Sections 11 and 12 of the aforesaid treaty reads as follows, to wit:

Article 11.

"The Government of the United States, not being prepared to assent to the claim set up under the treaty of September the twenty-seventh, eighteen hundred and thirty, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration; it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed the proceeds of the sale of the lands ceded by them to the United States, by the treaty of September the twenty-seventh, eighteen hundred and thirty, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws to the lands remaining unsold, in order that a final settlement with them may be promptly effected, or,

Second. Whether the Choctaws shall be allowed a gross sum, in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much.

Article 12.

"In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether

national or individual, arising under any *any* former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just—the settlement and payment to be made with the advice and under the direction of the United States Agent for the tribe, and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for, and bound to pay, all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.”

5 4. That thereafter, to-wit: on the 21st day of November, 1855, in recognition of the services rendered by said delegation in negotiating the treaty of June 22, 1855, and for services thereafter to be rendered by said delegation for representing the Choctaw Nation in adjusting the claims of the Choctaw Nation between the United States, and making final settlement between said Nation and the United States, the following contract on the part of the Choctaw Nation was made and entered upon the official records of the Choctaw Nation and duly approved by the Choctaw Council, which contract reads as follows:

The Contract.

“We, the undersigned chiefs, do hereby agree that the delegation, viz: Samuel Garland, P. P. Pitchlynn, Israel Folsom and Dixon W. Lewis, shall receive twenty per cent. upon all claims arising or accruing to this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that said delegation are to receive no fees for the lease money nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

“In testimony whereof, we hereunto set our hands and seals.

ALLEN WRIGHT,

P. C., C. N.

N. COCHANAUER, [SEAL.]

GEORGE W. HARKINS,

Dis. Chfs.

“Given this, the 21st day of November, 1855. Approved as required by the third section of the schedule of the Constitution, this the 18th day of October, 1868.”

6 That under the provisions of said contract said Samuel Garland, deceased, and the other members of said delegation con-

tiated to represent the Choctaw Nation and adjust the claims of said Nation with the United States; that under the provisions of the 11th Article of the Treaty of June 22, 1855, as aforesaid, there was submitted to the Senate of the United States a statement of the claims and demands of the Choctaw Nation, together with supporting evidence, and said Samuel Garland prepared and assisted in preparing said statement and evidence filed in support thereof and presented and assisted in presenting the matter before the Senate of the United States, and as a result of said presentation the Senate of the United States on March 9, 1855, passed a resolution allowing the Choctaws the proceeds of the sale of certain lands claimed by said Choctaws, which had been sold by the United States up to January 1, 1839, less the cost of survey and sale, and such other expenditures as had heretofore been made by the United States and the Senate by resolution called on the Secretary of the Interior for an account stated; that in compliance with the resolution of the Senate, the Secretary of the Interior caused an account to be stated between the United States and the Choctaw Nation, and said account as stated showed that the United States was indebted to the Choctaw Nation in the sum of \$2,981,247.30, the same being the net proceeds of the land sold by the United States and obtained from the Choctaw Nation after the treaty of 1830, less the cost of survey and sale, and said amount as so determined was the basis of the judgment subsequently obtained, by the Choctaw Nation against the United States.

5. That by act of Congress of March 2, 1861, there was paid to the Choctaw Nation \$250,000 the same being in substance and effect a payment on account for the amount found due by the Senate, and was the direct result of the labors of the said Samuel Garland and *and* other members of said delegation.

6. That thereafter the rights of the Choctaw Nation to the payment of the amounts due from the United States were diligently prosecuted in the Court of Claims and the Supreme Court of the United States by said Samuel Garland and the other delegates during the lifetime of said Samuel Garland, and as a result of said prosecution a judgment was rendered by the Court of Claims and an appeal prosecuted to the Supreme Court of the United States, and on November 15, 1886, said case was decided (119 U. S., page 1), against the United States, and judgment was rendered in favor of the Choctaw Nation as follows:

First, for lands sold by the United States claimed by the Choctaw Nation, less the cost of survey and sale, two million nine hundred eighty-one thousand, two hundred forty-seven and 30/100 (\$2,981,247.30) dollars, subject to the deduction of two hundred fifty thousand (\$250,000.00) dollars paid under the Act of Congress of March 2, 1861.

Second. For unpaid annuities, \$59,449.32;

Third. For lands taken in fixing the boundary between the State of Arkansas and the Choctaw Nation, \$68,102.00, making a total balance due the Choctaw Nation, \$2,858,798.62.

7. That by Act of Congress passed June 29, 1888, Congress of the United States appropriated two million eight hundred fifty-eight thousand, seven hundred ninety-eight and 62-100, (\$2,858,798.62) dollars, together with interest at the rate of 5 per cent. per annum from the 6th day of December, 1886 to June 29, 1888, the same being two hundred nineteen thousand, five hundred seventy-one and 61-100 (\$219,571.61) dollars, making a total sum of three million seventy-eight thousand, three hundred seventy-one and 23-100 (\$3,078,371.23) dollars in payment of the judgment heretofore referred to, a copy of said act of Congress making said appropriation is as follows, to wit:

Section 9 of the act of Congress approved June 29th, 1888 (25 Stat. L. P., 239).

"That for payment to the Choctaw Nation of two million eight hundred fifty-eight thousand, seven hundred ninety-eight and 62-100 (\$2,858,798.62) dollars, the said sum being the amount of the judgment rendered in favor of said Nation by the Court of Claims on the 15th day of December Anno Domini, eighteen hundred and eighty-six, on a mandate issued by the Supreme Court at the October term of said court together with such further sum as may be necessary to pay the interest on said judgment at five per cent. per annum, from the date of the presentation of the transcript of said judgment to the Secretary of the Treasury for payment."

That on the 25th day of February, 1888, the Choctaw Council on account of the death of Samuel Garland, and the other delegates, and for the avowed purpose of paying the estate of Samuel Garland and the other members of said delegation, appointed Campbell LeFlore and Edmund McCurtain as the Agents of the Choctaw Nation to make requisition upon the United States for the amount due the said Samuel Garland and the other delegates under the contract, and for the services rendered said Nation, and for monies expended by said delegates as expenses incurred in representing the Nation, said act reads as follows:

"Be it enacted by the General Council of the Choctaw Nation assembled, that the principal chief be and is hereby authorized and directed for and in behalf of the Choctaw Nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment to Campbell LeFlore and Edmund McCurtain, as delegate successor to P. P. Pitchlynn, Samuel Garland, and others, or to their order, the sum of twenty (20) per cent. of whatever may be appropriated by Congress in payment of the judgments of the Court of Claims in favor of the Choctaw Nation rendered on the 15th day of December, 1886, and in addition thereto the sum of twenty-three thousand three hundred and ninety-five and 39-100 (\$23,395.39) dollars, the same to be paid in such sums and at such times and places as shall be requested by the said LeFlore and McCurtain, less 10 per cent on \$1,500.00, and such requisitions when made shall be taken and accepted as is hereby required by the twelfth article of the treaty of 1855.

Be it further enacted that this act take effect and be in force from and after its passage.

BENJ. WOODS,
Chairman Committee.

Approved, February 25, 1888,
THOMPSON McKINNEY,
"Principal Chief, C. N."

That the sum of twenty-three thousand three hundred ninety-five and 39-100 (\$23,395.39) dollars referred to in the foregoing Act was the amount which the said Samuel Garland and the other delegates had paid in expenses for and on behalf of the Choctaw Nation, and found due them in settlement by the Choctaw Nation, Nov., 1861, said amount not having been paid or refunded to Samuel Garland and the other three delegates at the time LeFlore and McCurtain were appointed delegates under the aforesaid Act of the Choctaw Council; the above amount, to-wit, twenty-three thousand three hundred and ninety-five and 39-100 (\$23,395.39) dollars was to be added to 20 per cent on three million, seventy-eight thousand, three hundred seventy-one and 23-100 (\$23,078,371.23) dollars, less 10 per cent, on fifteen hundred (\$1,500.00) dollars, making a total of sum due said delegates, to-wit, six hundred thirty-eight thousand, nine hundred nineteen and 43-100 (\$638,919.43) dollars.

8. That the appointment of Campbell LeFlore and Edmund McCurtain by the Choctaw Council was without the consent, either expressed or implied, by the heirs of Samuel Garland, or of any
11 person authorized to act for the estate of Samuel Garland, and said Campbell LeFlore and Edmund McCurtain were appointed by the Choctaw Nation as its agents to collect from the United States the 20 per cent. of the judgment in favor of the Choctaw Nation and pay the same to the heirs of Samuel Garland and the other delegates, as aforesaid; said 20 per cent. together with the above unpaid expenses being the amount due said delegation for services performed and rendered by them.

9. That said Campbell LeFlore and Edmund McCurtain, agents of the Choctaw Nation, under and by virtue of the authority vested in them as agents, collected from the United States Government the sum of six hundred thirty-eight thousand, nine hundred nineteen and 43-100 (\$638,919.43) dollars, the same being 20 per cent. of the judgment rendered in favor of the Choctaw Nation, together with twenty-three thousand three hundred ninety-five and 39-100 (\$23,395.39) dollars, less 10 per cent. of fifteen hundred (\$1500.00) dollars; said Campbell LeFlore and Edmund McCurtain were charged with the duties of distributing said funds equally; that in the month of February, 1889, at Fort Smith, Arkansas, the said Campbell LeFlore paid to the heirs of Samuel Garland the sum of forty-three thousand nine hundred forty-three and 20-100 (\$43,943.20) dollars, but wholly failed, neglected, and upon demand refused to pay the balance due said heirs of Samuel Garland, the amount due said heirs being one-fourth of six hundred thirty-eight thousand, nine hundred nineteen and 43-100 (\$638,919.43) dollars, or one han-

12 dred fifty-nine thousand, seven hundred twenty-nine and 85-100 (\$159,729.85) dollars; after deducting the amount paid, to wit: forty-three thousand nine hundred forty-three and 30-100 (\$43,943.30) dollars, there remained due and unpaid the heirs of Samuel Garland the sum of one hundred fifteen thousand, seven hundred eighty-six and 65-100 (\$115,786.65) dollars, which sum was then due and payable from the Choctaw Nation to the heirs of Samuel Garland, deceased, and the same remains yet due and unpaid, with legal interest thereon at the rate of 5 per cent. per annum from the 12th day of August, 1889, to final judgment in this case.

The Choctaw Nation has never denied the indebtedness to the estate of Samuel Garland, deceased, but has always recognized said claim of the heirs of Samuel Garland, and acknowledged that the same was a just claim and that it ought to be paid; said Nation recognizing the fact that said Samuel Garland was one of the most able statesman that the Choctaw Nation ever had; that he gave his entire life, from 1853 until his death in 1870, in settling the claims that the Choctaw Nation had against the United States. He spent the most of his time at Washington in looking after the Choctaw Nation's business, and by reason of giving his entire time to the interest of the Choctaw Nation he was deprived of remaining at home, wherein he would have accumulated other property for his family.

Said Choctaw Nation, having great confidence in the ability and integrity of said Samuel Garland and the other delegates, imposed upon them additional duties by act of the Choctaw Nation, 13 posed upon them additional duties by act of the Choctaw Nation, approved October 27, 1858, a copy of which act is hereto attached and marked Exhibit "B." Said act reads as follows, to-wit:

"Resolutions Directing the Choctaw Delegation to Washington City to Bring About a Settlement of all Matters Arising in Relation to the Eastern Boundary of the Choctaw Nation.

"Resolved by the General Council of the Choctaw Nation, that Samuel Garland, Peter Folsom, P. P. Pitchlynn and Israel Folsom, who compose the Choctaw delegation to Washington City, be and they are hereby requested, authorized and fully empowered, in addition to the powers they already possess in behalf of this Nation, to take into consideration all matters arising in relation to the running of the eastern boundary line of the Choctaw Nation by direction of the Government of the United States during the present year, and determine and agree upon the compensation to be allowed by the Government of the United States, in consideration of that portion of the territory of this Nation found to be within the limits of the State of Arkansas.

"Be it further resolved, that this resolution take effect and be in force from and after its passage."

"Approved 27th October, 1858."

Said Choctaw Nation, recognizing the justness of the aforesaid claim and the valuable services rendered by said Samuel Garland

during his lifetime, passed an act on the 8th day of October, 1897, authorizing the payment of the aforesaid claim, which act reads as follows, to-wit:

14 "An Act Appropriating the Balance Due the Heirs of Samuel Garland, Deceased, Delegate of 1853.

Be it enacted by the General Council of the Choctaw Nation Assembled:

Sec. 1. That the sum of one hundred and fifteen thousand seven hundred eighty-six and 65-100 (\$115,786.65) dollars be and is hereby appropriated out of any funds in the National Treasury, not otherwise appropriated, to pay the balance due the heirs of Samuel Garland, deceased, delegate of the Choctaw Nation of 1853, by reason of his contract entered into on the 21st day of November, 1855, by and between the Choctaw Nation and the said Samuel Garland, P. P. Pitchlynn, and others, in collection of what is known as the net proceed claim.

Sec. 2. Be it further enacted that the National Auditor of the Choctaw Nation is hereby directed to issue his warrant for same in favor of Mary E. Rogers, D. C. Garland, Georgia Brice, nee Rogers, Minnie McBride, nee Rogers, Laura Cole, nee Rogers, Leona Stealy, nee Rogers, and John M. Rogers heirs of the said Samuel Garland, deceased, and the National Auditor *his* hereby directed to pay the same.

Sec. 3. Be it further enacted that this act shall take effect and be in force and effect from and after its passage.

Endorsed: Solomon Mackey, signed, Solomon Mackey, a member of the House of Representatives. Passed the House on this the 8th day of October, 1897.

WILLIE MARTIN,
Speaker.

15 Referred to the Senate on the 8th day of October, 1897.
Passed the Senate on this the 8th day of October, 1897.

JULIAS HAMPTON,
President of the Senate.

This act was vetoed by the Principal Chief of the Choctaw Nation for the reason that it would exhaust the available funds in the Treasury of the Nation and would force the suspension of the Choctaw schools by appropriating the above amount at that time. The heirs of Samuel Garland have continued to demand payment and to seek by legal methods the collection of said amount at all times and in all proper and legal ways up to and including the date of this petition, but the heirs of Samuel Garland had no court with jurisdiction of the Choctaw Nation in which to commence suit until the Act of Congress was passed on the 29th day of May, 1908, above referred, giving said heirs the right to commence *said*

action in the Court of Claims of the United States. The Choctaw Nation cannot be sued without a special Act of Congress granting such right as the Choctaw Nation "is not a sovereign State, but is a domestic and dependent State subject to the jurisdiction and authority of the United States; being a domestic and dependent State, the United States may authorize suit to be brought against it." (Thebo vs. The Choctaw Tribe of Indians, 13 "C. C. A." 519.)

That by reason of the Choctaw Nation not being subject to suit without an act of Congress, the heirs of Samuel Garland could not bring suit against said Nation until legislation was obtained permitting them to do so; however, said heirs have worked diligently to secure said legislation since the act of the Choctaw Council appropriating the aforesaid sum was vetoed by the Chief of the Choctaw Nation for the reasons heretofore stated.

The heirs of Samuel Garland, deceased, are as follows, to-wit: Ellen Garland (an adult), and her minor children, to-wit: Thomas A. Garland, Leonidas M. Garland, Margritte Garland and Ellen Garland; Bonnie May Cole, Rogers L. Cole, Presley B. Cole, jr., minors; Edward Garland Thomas, a minor, Pleasant McBride, a minor, Goodwin B. Stealey, Laurenzo P. Stealey, Cathleen Stealey, minors, John M. Rogers (an incompetent, adult), Georgia McCaffrey (an adult).

The aforesaid named heirs of Samuel Garland, deceased, are the petitioners in this action, and they derive their interest in the aforesaid claim as follows, to-wit: That in the latter part of the year 1870 said Samuel Garland departed this life, and before his death he made and executed a will by which he bequeathed and devised unto his wife, Mary P. Garland, all of his interest in the aforesaid claim, a copy of said will is hereto attached and marked Exhibit "C", and made a part hereof; and thereafter, to-wit: About the year 1887 said Mary P. Garland departed this life, and before her death she made and executed a will by which she bequeathed and devised all her interest in and to the above-named claim as follows, to-wit: To her grandson, David C. Garland, a one-third interest; to her daughter, Mary Eliza Rogers, (née Garland), a one-third interest; to the heirs of Mary Eliza Rogers (née Garland), a one-third interest, said heirs of Mary Eliza Rogers (née Garland) then consisting of five living children, said children's names being as follows, to-wit:

Georgia McCaffrey (née Rogers, née Bride), Laura Rogers, Leona Rogers, Minnie I. Thomas (née Rogers), and John M. Rogers. A copy of said will is hereto attached and marked Exhibit "CC."

Thereafter, and about the year 1900, said D. C. Garland departed this life leaving surviving him his widow, Ellen Garland, and their minor children, to-wit: Thomas A. Garland, Leonidas M. Garland, Margritte Garland and Ellen Garland. Said Ellen Garland (an adult) joins in this suit for herself and as legal guardian of her above-named minor children, a copy of said letters of guardianship will be hereto attached and marked Exhibit "D" and "E", and made a part hereof.

Said Laura Rogers married Preslie B. Cole, and there was born to them as the issue of said marriage, the above, named children, to-wit: Bonnie May Cole, Rogers L. Cole, Presley B. Cole, jr., and about the year 1902 said Laura Cole (née Rogers) departed this life leaving surviving her, her husband, Preslie B. Cole, and the aforesaid minor children; said Preslie B. Cole joins in this suit for and on behalf of Bonnie May Cole, Rogers L. Cole, and Preslie B. Cole, jr., minors, as their natural guardian and next friend;

Minnie I. Rogers married Ab. Thomas, and as the issue of 18 said marriage there were two children born, to-wit: Jennie

Thomas and Edward Garland Thomas; thereafter Ab. Thomas departed this life leaving surviving him his said wife and the two minor children aforesaid; and thereafter said Minnie I. Thomas married William P. McBride, and as the issue of said marriage one child was born, to-wit: Pleasant McBride; and thereafter said Minnie I. McBride departed this life leaving surviving her, her husband, William P. McBride and her three minor children, to-wit: Jennie Thomas, Edward Garland Thomas, and Pleasant McBride; and thereafter said Jennie Thomas departed this life, leaving surviving her, her brother, Edward C. Thomas, and half-brother, Pleasant McBride, William P. McBride joins in this suit as natural guardian and next friend of Pleasant McBride, and as legal guardian of Edward Garland Thomas, Minors, and as administrator of the estate of Jennie Thomas, deceased, a copy of said letters of guardianship and administration will be hereto attached and marked Exhibits "F" and "G", and made a part hereof.

Leona Rogers married C. L. Stealey, and as the issue of said marriage there were three children born, to wit: Goodwin B. Stealey, Laurenzo P. Stealey, Cathleen Stealey, and thereafter, and about the year 1900 Leona Stealey departed this life leaving surviving her husband, C. L. Stealey and the aforesaid named children; said C. L. Stealey joins in this suit for and on behalf of Goodwin B. Stealey, Laurenzo P. Stealey, and Cathleen Stealey, minors, as their natural guardian and next friend.

John M. Rogers (an incompetent), joins in this suit by 19 Walter Rogers, as his legal guardian, a certified copy of said letters of guardianship is hereto attached and marked Exhibit "I" and made a part hereof.

Georgia McCaffree (an adult), joins in this suit for herself.

Wherefore, your petitioners, the heirs of Samuel Garland, deceased, pray that they have and recover of and from the Choctaw Nation the sum of one hundred and fifteen thousand and seven hundred and eighty-six and 65-100 (\$115,786.65) dollars, and interest on the above amount at the rate of 5 per cent. per annum from the 12th day of August, 1888, until final judgment in this case, and that said petitioners and heirs as aforesaid have such further relief as may be proper and just under the law and facts in this case.

THE HEIRS OF SAMUEL GARLAND,

DECEASED,

By W. N. REDWINE,

Attorneys for the Heirs of Samuel Garland,

Deceased, the Petitioners Herein.

UNITED STATES OF AMERICA,
State of Oklahoma,
Pittsburg County:

Preslie B. Cole, one of the plaintiffs herein, after being duly sworn, deposes and says that the matters and things herein contained which of his own knowledge are true and correct, and that the matters and things herein contained, on information and belief are true and correct, as he verily believes.

PRESLIE B. COLE.

Subscribed and sworn to before me this the 31st day of August, 1908.

L. M. PEAK,
Notary Public.

Commission expires August 3, 1912.

20 EXHIBIT "A."

"Resolutions Creating a Delegation to Settle All Unsettled Business with the Government of the United States,

"Sec. 9. Whereas, The Choctaws were and ever have been dissatisfied with the manner in which the treaty of Dancing Rabbit Creek was made, owing to the many circumstances which were created to force them into it, and owing to the exceedingly small and inadequate amount which was given as payment for their country; and whereas a large number of claims on the United States, arising under the 14th and 19th and other articles of the treaty of 1830 are still remaining unpaid; and whereas information has reached the Council that the demands of a portion of certain claimants have been prejudiced by the unauthorized interference of white men at Washington, who, without knowledge or consent of the claimants pretend to be their attorneys; and whereas, the claimants have, repeatedly, from time to time, called on the Council to assist them in procuring what is justly due them from the United States; and whereas in the opinion of the Council a speedy and final settlement should be made with the United States of the foregoing specification. Therefore,

"Resolved, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis and Samuel Garland be and are hereby appointed delegates and fully empowered to represent and to institute, in behalf of the Choctaw people, a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government east of the Mississippi River, and protect and defend all and every right and interest of the Choctaws arising under treaty stipulation or otherwise.

21 "Be it further resolved, That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and

bring to a final close all unsettled business of the Choctaw people with the said Government of the United States.

"Be it further resolved, That in case of resignation or death of any of the said delegation above mentioned the chiefs have the power to appoint any person to fill such vacancy in his district.

"Be it further resolved, That the chiefs be required to inform the Government at Washington, through the proper channel, of the appointment of said delegation of the Nation, of their powers, and of the fact that no other person whatsoever is authorized to act for or represent Choctaw claimants at Washington.

"Be it further resolved, That the agent for the Government be requested to accompany said delegation, and to aid them with his counsel and official influence in effecting the object of their visit.

"Approved November 9, 1853."

(Copy.)

EXHIBIT "B."

"Resolutions Directing the Choctaw Delegation to Washington City to Bring About a Settlement of All Matters Arising in Relation to the Eastern Boundary of the Choctaw Nation.

"Resolved by the General Council of the Choctaw Nation, That Samuel Garland, Peter Folsom, P. P. Pitchlynn and Israel Folsom, who compose the Choctaw delegation to Washington City, be and

they are hereby requested, authorized, and fully empowered, 22 in addition to the powers they already possess in behalf of this Nation, to take into consideration all matters arising in

relation to the running of the eastern boundary line of the Choctaw Nation by direction of the Government of the United States during the present year, and determine and agree upon the compensation to be allowed by the Government of the United States, in consideration of that portion of the territory of this Nation found to be within the limits of the State of Arkansas.

"Be it further resolved, That this resolution take effect and be in force from and after its passage."

Approved 27th October, 1858.

EXHIBIT "C."

Certified Copy of Last Will of Samuel Garland to His Beloved Wife, Mrs. Mary P. Garland.

Nov. 1st. In the Name of God, Amen.

"I, Samuel Garland, of Red River County, Choctaw Nation, being in weak health, but of sound and disposing mind and memory, calling to mind the frailty and uncertainty of human life, and being desirous of settling my worldly affairs and directing how the estate with which it has pleased God to bless me shall be disposed of after

my decease, while I have strength and capacity so to do to make and publish this my last will and testament thereby revoking and making null and void all other last wills and testament by me heretofore made, and first, I commend my Immortal being to Him who gave it, and my body to the earth to be buried with little expense or ostentation by executors hereinafter named.

23 "And as to my worldly estate and all the property real or personal or mixed, of which I shall die seized and possessed, or to which I shall be entitled at time of decease, I devise, bequeath, and dispose thereof in the manner following, to-wit:

"I give and devise and bequeath to my beloved wife, Mary P. Garland,

"The homestead we are now living on together with household furniture, stock, and everything on the place, including four mules, two wagons, one carriage, and one buggy, together with the full use and control of the stock, comprising horses, cattle and hogs at my ranch in Jackfork County, or elsewhere in Choctaw Nation. Also my interest in the net proceeds together with a gold watch which I wish to be retained in the family, also my notes and account now in the care of my daughter, Mary Eliza Rogers.

"In testimony whereof, I, the said Samuel Garland have to this my last will and testament subscribed my name and affixed my seal this the twentieth day of March, in the year of our Lord, one thousand eight hundred and seventy.

[SEAL.]

SAMUEL GARLAND."

The above instrument consisting of one sheet was now here subscribed by Samuel Garland, the testator in the presence of each of us, and was at the time declared by him to be his last will and testament, and we at his request sign our names hereto as, attesting witnesses.

CHARLES R. STOCKER,

Little River Co., Arkansas.

her

MARGARET x PITCHLYNN,

mark

Red River County, Choctaw Nation.

24 The above last will and testament subscribed and sealed by Samuel Garland, 20th day of March, A. D. 1870, is this day duly approved as being legal and correct by me.

Given under my hand this 2d day of March, A. D. 1871.

A. McCAFFREE,

Co. and Probate Judge, Red

River County, C. N.

Filed in the Clerk's Office for record, this 2d day of May, A. D. 1871.

D. WEBSTER,

Co. and Probate Clerk, Red

River Co., C. N.

I do hereby certify that the above certified copy of the original is true and correct.

Given under my hand and seal of court this the 27th day of December, A. D. 1904.

W. E. FRAZIER,
Clerk of Red River Co., C. X.

EXHIBIT "CC."

Copy of the Will of Mary P. Garland.

"Know all men by these presents, That I, Mary P. Garland, of the County of Red River, Choctaw Nation, being in ill health, but of sound mind and memory, do make and publish this my first and last will and testament.

"And as to my worldly estate and all the property, real, personal or mixed, of which I shall die seized and possessed, or to which I shall be entitled to at the time of my decease, I devise, bequeath and dispose thereof in manner following, to-wit: I give, devise and bequeath to my grandson, David C. Garland, my Old Home-
25 stead, Locust Grove, and all the appurtenances thereunto belonging, situated in the County of Red River, Choctaw Nation, about one mile west of the Arkansas line to have and to hold the same forever.

"And I give and bequeath to my grandson, David C. Garland, one-third of any and all money and interest and advantage that may be due me from the Government of the United States or the Choctaw Nation by reason of and resulting from the service of my late beloved husband, Samuel Garland, rendered to the Choctaw Nation as delegate to the United States Government in the settlement of the Net Proceeds Claim; to have and to hold forever.

"And I give and bequeath to my beloved daughter, Mary Eliza Rogers, one-third of all money and interest and advantage that may be due me from the Government of the United States or the Choctaw Nation by reason of and resulting from the services of my late beloved husband, Samuel Garland, rendered to the Choctaw Nation as a delegate to the United States for the settlement of the Net Proceeds Claim; to have and to hold forever.

"And I give and bequeath to the heirs of Mary Eliza Rogers, my grandchildren, the remaining one-third of all money and interest and advantage that may be due me from the Government of the United States or the Choctaw Nation by reason of and resulting from services of my late beloved husband, Samuel Garland, rendered to the Choctaw Nation as a delegate to the United States in the settlement of the Net Proceeds Claim, to be divided equally among them, and to have and to hold the same forever.

In testimony whereof, I, the said Mary P. Garland, have to this my first and last will and testament subscribed my name and
26 affixed my seal this the 13th day of October, in the year of our Lord, one thousand eight hundred and eighty-five.

(Signed)

MARY P. GARLAND. [SEAL.]

Signed, sealed, and published and declared by the said Mary P. Garland as and for her first will and testament in the presence of us, who at her request and in her presence and in the presence of each other have subscribed our names as witnesses thereto.

his
MILES x EURE.
mark
S. N. ROGERS,
GEO. TAAFFE.

This is to certify that this is a correct copy of the original will of Mary P. Garland, which is on file in my office.

Given under my hand and county seal this the 25th day of August, A. D., 1888.

[Seal the County and Probate Court of Red River Co.,
Choctaw Nation.]

(Signed,)

M. J. BROWN,
County Clerk.

We do certify that this is a true copy of the original will of Mary P. Garland whereon we have signed our names.

Witnesses:

S. N. ROGERS,
his
MILES x EURE.
mark

Sworn to and subscribed before me this the 27th day of August, A. D., 1888.

ALFRED W. McCLURE,
County and Probate Judge.

(Endorsed on back.)

Filed in my office this the 6th day of February, A. D., 1888.

(Signed)

M. J. BROWN,
County Clerk.

27

EXHIBIT "I."

Letters of Guardianship.

UNITED STATES OF AMERICA,

Indian Territory, Northern District:

"To all to whom these presents shall come, Greeting:

"Know Ye, That whereas W. S. Rogers has, on this day, by the United States Court in Probate, in and for said Northern District of the Indian Territory, been appointed guardian for John M. Rogers, an incompetent person under the age of 31 years, by his entering into bond to the United States of America for the use of said incompetent in the sum of one thousand and no-100 dollars, and

whereas the said W. S. Rogers has this day filed his bond in such sum to the United States of America for the use of said incompetent, which said bond stands approved by the Court;

"Now, therefore, he, the said W. S. Rogers, is hereby authorized and empowered to collect and receive all monies, property and effects that now are or hereafter may become due to his said ward, and in general to *so* and perform all and singular the duties devolving upon him as such guardian by law, or that may be enjoined upon him by the lawful order, sentence of decree of any court having competent jurisdiction.

In testimony whereof, I, Chas. A. Davidson, Clerk of the United States Court in Probate in and for the Northern District of the Indian Territory, hereunto set my hand and affix the seal of said Court, at my office in Nowata, this 3d day of October, A. D. 1907.

[SEAL.]

CHAS. A. DAVIDSON,

Clerk.

By J. H. MOREHOUSE,

Deputy."

28

II. *General Traverse.*

Filed Jan. 22, 1909,

And now comes the Attorney-General of the United States, on behalf of the Choctaw Nation, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,

Assistant Attorney General.

29

III. *History of Proceedings.*

On May 27, 1909, at their request, Messrs. McCurtain and Hill were entered as attorneys for the Choctaw Nation.

On Jan. 6, 1917, at the request of the attorney of record, Mr. Harry Peyton was entered as of counsel.

On February 6, 1917, the case was first argued and submitted.

On March 12, 1917, the court filed findings of fact and conclusion of law and entered judgment for claimant in the sum of \$94,817.66, with an opinion by Hay, J.

On May 21, 1917, the defendants filed a motion for new trial and amendment of findings.

On May 24, 1917, the claimants filed objections to defendants' motion of May 21, 1917.

On May 28, 1917, the defendants' motion was ordered to Law Calendar for argument before full bench.

On February 25, 1918, the defendants' motion for new trial was allowed in open court. And it was further ordered that the case be remanded to the general docket with leave to both sides to take testimony.

IV. *Argument and Submission of Case.*

On May 13, 1918, this case was argued and submitted on merits, on new trial, by Mr. Harry Peyton, for the claimants, and Mr. George M. Anderson for the defendants.

30 V. *Findings of Fact (as Amended by Order of May 5, 1919), Conclusion of Law, and Opinion of the Court by Downey, J.*

Filed February 17, 1919.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of Fact.

I.

This suit was filed on September 3, 1908, under section 5 of the act of May 29, 1908, 35 Stat., 445, which provides:

"That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation."

II.

On November 9, 1853, the legislative assembly of the Choctaw Nation passed the following resolution:

Sec. 9. Whereas the Choctaws were and ever have been dissatisfied with the manner in which the treaty of Dancing Rabbit Creek was made, owing to the many circumstances which were created to force them into it, and owing to the exceeding small and inadequate amount which was given as payment for their country; and whereas a large number of claims on the United States, arising under the 14th and 19th and other articles of the treaty of 1830, are still remaining unpaid; and whereas information has reached the council that the demands of a portion of certain claimants have become prejudiced by the unauthorized interference of white men at Washington, who, without the knowledge or consent of the claimants, pre-

31 tend to be their attorneys; and whereas the claimants have repeatedly, from time to time, called on the council to assist them in procuring what is justly due them from the United States; and whereas, in the opinion of the council, a speedy and final settlement should be made with the United States of the foregoing specification. Therefore,

Resolved, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland be, and are hereby, appointed delegates and fully empowered to represent and to institute, in behalf of the Choctaw people, a claim upon the United States for the pay and remuneration of the country which they ceded to the United States Government, east of the Mississippi River, and protect and defend all and every right and interest of the Choctaws arising under treaty stipulations or otherwise.

Be it further resolved, That the said delegates are hereby clothed with full power to settle and dispose of by treaty, or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the said Government of the United States.

Be it further resolved, That in case of resignation or death of any of the said delegation above mentioned, the chiefs have the power to appoint any person to fill such vacancy in his district.

Be it further resolved, That the chiefs be required to inform the Government at Washington, through the proper channel, of the appointment of said delegation of the nation, of their powers and of the fact that no other person, whatsoever, is authorized to act for or represent Choctaw claimants at Washington.

Be it further resolved, That the agent for the Government be requested to accompany said delegation and to aid them with his counsel and official influence in effecting the object of their visit.

Approved November 9, 1853.

(Laws of Choctaw Nation, 1869, pp. 123-125.)

In pursuance of this resolution the members of the delegation went to the city of Washington and began negotiations for the settlement of all claims which the nation had against the United States. As a result of these negotiations the treaty of June 22, 1855, was entered into between the Choctaw Nation and the United States (11 Stat., 611-614). It was ratified by the general council of the Choctaw Nation on the 19th day of November, 1885. By virtue of this treaty the claims of the Choctaw Nation were submitted to the Senate of the United States for adjudication. On March 9, 1859, the Senate of the United States passed a resolution directing that the Choctaws be allowed the proceeds of the sale of such lands as had been sold on the 1st day of January next preceeding, with certain deductions and exclusions, and on the same day, by another resolution, directed the Secretary of the Interior to cause an account to be stated with the Choctaws showing the amount due them under the prescribed principles of settlement and report the same to Con-

gress, which account, when stated, showed that the United States was indebted to the Choctaw Nation in the sum of \$2,981,247.30.

On March 2, 1851, Congress passed an act appropriating \$500,000 in part payment of the sum ascertained to be due said nation, \$250,000 to be paid in money and \$250,000 in bonds of the United States. The \$250,000 in money was paid but the bonds were never delivered.

32 On March 3, 1881, an act was passed by Congress conferring upon this court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation and render a judgment. This court gave a judgment in favor of the Choctaw Nation for the sum of \$408,120.32. From this judgment an appeal was taken to the Supreme Court of the United States, and at the October term, 1886, of that court a decision was rendered, the result of which was that this court entered a judgment for the Choctaw Nation in the sum of \$2,858,798.62. On June 29, 1888, Congress passed an act appropriating the aforesaid sum, with interest at the rate of 5 per cent per annum from the 6th day of December, 1885, to the 29th day of June, 1888, making a total sum of \$3,978,311.23.

III.

Among the records in the office of the national secretary of the Choctaw Nation there was found on August 31, 1892, the following paper:

"We, the undersigned chiefs, do hereby agree that the delegation, viz., Samuel Garland, P. P. Pitchlynn, Israel Folsom and Dixon W. Lewis, shall receive twenty per cent upon all claims arising or accruing to this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that said delegation are to receive no fees for the lease money, nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

In testimony whereof, we hereunto set our hands and seals.

N. COCHNAUER, [SEAL.]

GEO. W. HARKINS, [SEAL.]

ALLEN WRIGHT, [SEAL.]

P. C. C. N.

"Given this, the 2nd day of November, 1855. Approved as required by the third section of the schedule of the constitution, this the 18th day of October, 1868."

Section 3 of the schedule to the constitution of the Choctaw Nation of 1860 (Laws of the Choctaw Nation, compilation of 1869, p. 23) reads:

"Any special appointments or contracts heretofore made and approved under existing laws or resolutions of the General Council,

shall be approved by the principal chief of this nation, and the appointees commissioned, and contracts so made ratified by him.

The above contract was referred to by the Council of the Choctaw Nation in the following acts of that body approved October 30, 1873, and February 25, 1888, which read as follows:

Bill No. 28, an Act to Prescribe and Define the Duties of the National Treasurer in Relation to the Net Proceeds Claim.

Sec. 1. Be it enacted by the General Council of the Choctaw Nation assembled, That as soon as any amount may be appropriated by Congress for the net proceeds, the national treasurer be authorized and directed to receive the same at Washington and to pay not exceeding 30 per cent in fulfillment of the Choctaw contracts and 20 per cent of such appropriation for the delegates of 1853 and 1854, to enable them to discharge all liabilities and obligations under said contracts and all expenses necessarily incurred in recovering said claim, the other half to be returned for claims of individuals or for national purposes as indicated in 11 and 12 articles of the treaty of 1855 provided that all just debts due the nation, whether from the said delegation or for any sum improperly advanced under the Cochrane contract shall first be deducted and the residue coming under said contract or to said delegation respectively after final settlement at Washington shall be paid to them or their representative by said treasurer, the object of act being to secure a fair settlement and a full payment of the 30 per cent, deducting whatever has already been paid.

Sec. 2. And be it further enacted, That this act shall take effect from and after its passage and that all acts and part of acts in conflict herewith be, and the same hereby are, repealed.

Approved October 30th, 1873.

Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlynn and others, have recovered from the United States Government agreement in favor of the Choctaw Nation for \$2,858,798.62; and whereas, under the contract of the Choctaw Nation with said delegates dated Nov. 2nd, 1855, it is entitled to be paid twenty (20) per cent of said judgment; Now, therefore,

Be it enacted by the General Council of the Choctaw Nation assembled:

Sec. 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Le Flore and Edmund McCurtain, delegates and successors to P. P. Pitchlynn and other delegates of 1853, to enable them to pay the expenses and discharge the obligation in the prosecution of said claim, and to settle with the respective distributees of said delegation.

Sec. 2. Be it further enacted, That the sum of \$23,395.39, being the balance due the delegation under the settlement of Nov. 18, 1861, is hereby appropriated out of said fund less 10 per cent on \$1,500.00,

Sec. 3. Be it further enacted, That the said sums shall be paid to Campbell LeFlore and Edmund McCurtain, delegates of the Choctaw Nation, successors to P. P. Pitchlynn and others, and where so paid shall be accepted as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract.

Sec. 4. Be it further enacted, That the sum of twenty (20) per cent herein provided to be paid to the delegation aforesaid and the sum of thirty (30) per cent heretofore provided to be paid to the attorneys shall be accepted as full and final settlement of the amount due under their respective contracts, and that the remaining half or fifty (50) per cent of the amount appropriated for the payment of said judgment shall be retained in the Treasury of the United States subject to the legislation and requisition of the General Council of the Choctaw national [for] purposes and for the payment of the claims of individual Choctaws under the twelfth (12) article of the treaty of 1855.

Sec. 5. Be it further enacted, That this act shall take effect and be in force from and after its passage.

B. J. WOODS,
Chairman Committee.

Approved Feb. 25, 1888.

THOMPSON McKINNEY,
Principal Chief, C. N.

C. J. ANDERSON,
Recording Secretary.

IV.

By a resolution of the general council of the Choctaw Nation, approved November 10, 1854, reciting the appointment of P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland as delegates, they were instructed to remain at Washington and continue to press to final settlement all claims of the Choctaws against the Government.

By another resolution of the general council, approved November 4, 1857, "the delegates of the Choctaw Nation, who have in charge the business and interests of the nation arising under the treaty of Washington June 22, 1855," were instructed to proceed to Washington as soon as practicable and given full power to urge a speedy conclusion of all matters of unsettled business arising under the treaty.

The general council also passed an act, approved November 4, 1857, appropriating certain sums of money for the purposes therein named, as follows:

An Act Entitled An Act Appropriating Certain Sums of Money for Certain Purposes Therein Named.

Sec. 1. Be it enacted by the General Council of the Choctaw Nation assembled, That the sums of money hereinafter named, and for the

purposes more particularly specified, be and the same are hereby appropriated, to be paid of any moneys in the National Treasury, not otherwise appropriated, to the persons respectively entitled to receive the same, upon presentation of their accounts to the National Auditor, who is hereby directed to issue his warrants on the National Treasury, for said sums of money, respectively, to wit:

* * * * *

The sum of two thousand dollars (\$2,000), as an advance to P. P. Pitchlynn, one of the Choctaw delegation, at Washington City, for personal expenses.

The sum of two thousand dollars (\$2,000), as an advance to Samuel Garland, one of the Choctaw delegation, at Washington City, for personal expenses.

The sum of two thousand dollars (\$2,000), as an advance to Israel Folsom, one of the Choctaw delegation, at Washington City, for personal expenses.

35 The sum of two thousand dollars (\$2,000), as an advance to such person as the governor may appoint, to fill the vacancy in the Choctaw delegation, to be paid upon his special order, to the national auditor.

* * * * *

Approved November 4, 1857.

(Laws of Choctaw Nation, 1869, pp. 159, 160.)

The vacancy referred to in said act was the vacancy caused by the death of Dixon W. Lewis previous thereto, which vacancy was thereafter filled by the appointment of Peter Folsom, the exact date thereof not being shown.

Other acts and resolutions of the general council were as follows:

Report of Special Committee of the Council and Accompanying Act
Entitled an Act Appropriating Certain Sums of Money to the
Delegation to Washington City.

Your committee, to whom was referred the petition of S. Garland, one of the delegates to Washington, asking the council to appropriate any surplus money remaining in the treasury of the nation, not otherwise appropriated, after meeting the expenditures of the ensuing fiscal year, in order to enable the delegation to prosecute the claims of the nation at Washington, have taken the same under deliberation and beg leave to report that as it is very important that our delegates should proceed to Washington at as early a day as possible, to be there at the meeting of Congress to press the claims of the nation. We would, therefore, respectfully recommend that the council set apart from the national funds for that object the sum of eleven thousand dollars, as an advance made the delegates by the nation, say, two thousand dollars each to P. P. Pitchlynn, P. Folsom, and Israel Folsom, and five thousand dollars to S. Garland, to enable him to settle with Mr. Thompson McKinney; the said McKinney thereby forever releasing the nation from any further claim on his part.

for attending to arrearages of annuities; and would recommend the passage by the General Council of the following bill, viz:

Sec. 1. Be it enacted by the General Council of the Choctaw Nation, That the sum of eleven thousand dollars, viz, two thousand dollars to P. P. Pitchlynn, two thousand dollars to Israel Folsom, two thousand dollars to P. Folsom, and five thousand dollars to S. Garland to enable him to settle with McKinney, be set apart and appropriated out of any money in the national treasury not otherwise appropriated, for personal expenses whilst at Washington, as delegates prosecuting the claims of the nation, and upon presentation of their accounts to the national auditor he is hereby directed to issue his warrants on the national treasury for said sums of money.

Approved, 22d October, 1858.

An Act Appropriating \$6,000 to Pay the Expenses of the Delegation
to Washington.

Be it enacted by the General Council of the Choctaw Nation, That the sum of six thousand dollars, viz, two thousand dollars to P. P. Pitchlynn, two thousand to Israel Folsom, and two thousand
36 dollars to Samuel Garland, be set apart and appropriated, out of any money in the national treasury not otherwise appropriated in order that they may be enabled to proceed to Washington City to effect the appropriation necessary to complete the settlement as designed by the resolution of the Senate of the United States, passed 9th of March, 1859.

And be it further enacted, That the national auditor is hereby required to issue his warrant on the national treasury for the same.

Approved, October 20th, 1859.

(Laws of Choctaw Nation, 1869, p. 209.)

An Act Relative to the Eastern Boundary Line.

Be it enacted by the General Council of the Choctaw Nation, That the resolutions passed, at the regular session of the General Council, 1858, and approved October 27, A. D. 1858, directing the present Choctaw delegation at Washington City, composed of Samuel Garland, P. P. Pitchlynn, and Israel Folsom, to take into consideration all matters arising in relation to the running of the eastern boundary line of the Choctaw Nation, by direction of the Government of the United States, and determine and agree upon the compensation to be allowed by the Government of the United States, in consideration of that portion of the territory of this nation found to be within the limits of the State of Arkansas, is hereby wholly revoked and rendered null and void from and after the passage of this act.

Be it further enacted, That the present delegates now at Washington, be instructed and authorized to protest before the proper department in regard to the running of the eastern boundary line between the Choctaw country and the State of Arkansas, and contend for the true line in accordance with the treaty of June, A. D. 1855.

Be it further enacted, That said delegates shall not be entitled to any pay for such supervision, etc.

Approved, October 25th, 1859.

(Laws of Choctaw Nation, 1869, pp. 226, 227.)

A Bill to be Entitled "An Act to Provide for Indigent Choctaws and for Other Purposes."

Sec. 6. Be it further enacted, That the Commissioner of Indian Affairs be, and he is hereby, authorized to turn over, out of the interest arising from \$500,000 under the treaty of June 22, 1855, to the Choctaw delegation, to wit, P. P. Pitchlynn, I. Folsom, and Samuel Garland, \$2,000 each, in order to enable them to defray their expenses in attending to Choctaw business at Washington City.

* * * * *

Approved, October 27th, 1860.

(Certified copy filed.)

An Act Entitled "An Act for the Relief of the Heirs of Dixon W. Lewis, Deceased."

Sec. 1. Be it enacted by the General Council of the Choctaw Nation assembled, That the sum of two thousand dollars be, and the same is hereby, appropriated to the heirs of Dixon W. Lewis, 37 deceased, for his pay as delegate to Washington City from the nation, payable out of any money in the treasury not otherwise appropriated, and the national auditor is hereby directed to issue his warrant for said sum, and the national treasurer is hereby directed to pay the same.

Sec. 2. Be it further enacted, That this act take effect and be in force from and after its passage.

Approved, October 31st, 1860.

(Laws of Choctaw Nation, 1869, p. 332.)

A Resolution Creating a Committee to Inquire into the Result of the Mission of the Delegation, Composed of P. P. Pitchlynn et al., and to Report the Same to the General Council for Final Settlement.

Sec. 1. Be it resolved by the General Council of the Choctaw Nation assembled, That Messrs. R. M. Jones, B. L. Leflore, Coleman Cole, H. N. Folsom and F. Battiest be authorized as a committee to ascertain minutely of the delegation, P. P. Pitchlynn, I. Folsom, P. Folsom, and Samuel Garland, in regard to their mission, to sue and prosecute the U. S. Government for final settlement of all claims in behalf of the Choctaw Nation, and also to ascertain what amount is due the Nation from the United States, and ask them for a settlement thereof.

Sec. 2. Be it further resolved, That the said delegates be notified to attend upon the said committee to give all information desired, and

answer questions propounded to them, in regard to their mission to Washington City, for a full satisfaction of the General Council of that matter.

Sec. 3. Be it further resolved, That the said committee is hereby required to make a written report of the same as may suggest or recommend such action to be made as they may deem wise.

Approved, June, 1861.

(Laws of Choctaw Nation, 1869, p. 354.)

Whereas, Col. P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, were duly appointed delegates and commissioned as such in the name of the Choctaw Nation under several acts and resolutions of the General Council to institute in behalf of the Choctaw people, a claim upon the United States, for the pay and remuneration for the country which they ceded to the United States Government east of the Mississippi River; And whereas said delegates did effect a basis for the payment of said claims, as mentioned in the 11th and 12th articles of the Treaty of June 22d, 1855, and thereupon the Senate of the United States, on the 9th of March, 1859, did agree that the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States, on the 1st day of January of the same year, deducting therefrom the cost of survey, and sale, and all proper expenditures and payment under said treaty, etc., etc., and did authorize the Secretary of Interior to cause an account to be stated with the Choctaws, showing what amount is due them according to the principles of settlements, and report the same to Congress (see Report Senate, No. 374, Second Session, 35th Congress, 1858-59); And whereas it appears that the Secretary of the Interior did find, that according to the principles of settlement prescribed by said resolution, there was due to the Choctaw Nation the sum of \$2,981,247.30; And whereas the Senate Committee of Indian Affairs revised the account and reduced the amount thus reported to be due the Choctaws to \$2,332,560.85, and said Congress, by act of March 2d, 1861, did appropriate the sum of five hundred thousand dollars, on account of this claim, with a proviso, that in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians; Whereas, by the articles of the treaty of April 28, 1866, the United States reaffirmed all obligations arising out of treaty stipulations, or acts of legislation, with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, "not inconsistent herewith," as well as all the rights, privileges, and immunities heretofore possessed by said Nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be in full force, so far as they are consistent with the provisions of this treaty; Therefore,

Sec. 1. Be it resolved by the General Council of the Choctaw Nation assembled, That the delegates, composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, are hereby notified that inasmuch as they have nearly consummated the "net proceed question," they shall proceed without delay to Washington city for the express purpose of bringing the subject matter of these resolutions to the notice of Congress, and to respectfully ask an early appropriation to be made to carry into effect the amount due this nation, as stated in the foregoing preambles of these resolutions.

Sec. 2. Be it further resolved, That in the event an appropriation shall be made by Congress, in whole or in part payment of the net proceed sale of the lands of the Choctaws which they ceded to the United States east of Mississippi River, the delegates herein mentioned shall report to the national attorney of this nation the fact of such appropriation, who shall proceed to investigate the claims of such delegates as well as the amount that may be due their attorneys for fees under a certain contract said to have been made with John T. Cochrane, dated February 13th, 1855, and shall report the amount due to the delegates and attorneys, to the principal chief of this nation, who shall convene the council should he deem it necessary, in order to provide payment due under the contract aforesaid, as well as to carry into effect the 12th article of the treaty of June 22d, 1855. It being understood, however, that no money shall be paid on said contract, or any other contract which had not been duly authorized and approved by the council; and when contracts are adjusted and paid they shall be duly cancelled and filed away in the office of national secretary.

Sec. 3. Be it further resolved, That it is hereby declared to be the intention of the Choctaw Nation that the terms of service of the delegates herein mentioned shall expire whenever the whole amount of the "net proceed question" is adjusted and settled by Congress
 39 and said delegates are required to render a full and just report of their proceedings and progress they are making with the claim, from time to time, to the principal chief of this nation.

Sec. 4. Be it further resolved, That this resolution shall take effect and be in force from and after its passage.

Approved November 18, 1867.

(Laws of Choctaw Nation, 1869, pp. 470-472.)

Whereas, John B. Luce, of the County of Sebastian and State of Arkansas, by occupation an attorney has been heretofore employed in prosecuting claims of the Choctaw Nation and of its individual citizens against the United States, and whereas such employment commenced before the passage of the resolution of the Choctaw council, under which the delegation hereinafter mentioned was first constituted in the year 1853, and was resumed after the date of the treaty of 1855 in preparing statements of the claims of the Choctaws for presentation to the Senate under the 11th article of said treaty;

And, whereas, the said Luce has rendered essential service in the

prosecution of the claims of the Choctaw Nation for the award of the Senate of March 9, 1859;

And, whereas, by reason of his past connection with the prosecution of said claim, and of his previously acquired knowledge of the facts upon which said claim was originally based, extending over a period thirty-five years, the said Luce has become and is more familiar with the details and past history of said claim than any other person now living;

And, whereas, the United States Court of Claims has been authorized by an act approved March 3, 1881, to try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon, subject to an appeal to the Supreme Court of the United States;

And, whereas, in prosecuting the claims of said nation before said courts under said act the services of any attorney of record in said courts and of counsel to assist him will be required: Now, therefore,

The Choctaw Nation, by Peter Folsom, a citizen of the said Choctaw Nation, by occupation a delegate representing said nation, and residing therein, being duly authorized by resolutions of the Choctaw General Council of November 9, 1853, and November 10, 1854, to prosecute every claim and interest of the Choctaw people against the Government of the United States, and for that purpose to enter into all contracts which may become necessary and proper, and by subsequent resolutions of November 17, 1855, November 4, 1857, and October 29, 1874, recognizing, continuing, and reaffirming the powers in the resolutions first above named conferred, has, on the 26th day of April, 1881, at the city of Washington, D. C., made and entered into the following articles of agreement with the said John B. Luce, namely,

The said Choctaw Nation does hereby constitute and appoint the said Luce the true and lawful attorney of said nation, for said nation, and in its name to represent the Choctaw Nation in prosecuting the claim of said nation for the net proceeds of the lands ceded
40 by the treaty of 1830 or any other sums that may be due on any account whatsoever to said nation or to individual members thereof before the Court of Claims and the Supreme Court of the United States under and pursuant to the said act approved March 3, 1881, for the purpose of obtaining from said courts an adjudication in favor of said nation or individuals or both of any and all amounts that may be due, either under the treaties heretofore made between the United States and said nation or under the award and decision of the Senate of the United States of March 9, 1859, or on any other account whatsoever. For which service by the said Luce to be rendered, the said nation hereby promises to pay the said Luce an amount equal to five per centum of whatever sum or sums may be adjudged and decreed by the said courts to be due said nation and the said individuals, or either; to be computed upon and deducted from whatever may be certified to be due said nation or individuals or both under the seal of said courts or of either of them. And the said five per centum shall be in full for all services that may have been by the said Luce heretofore rendered in prosecuting the claim of said nation for the net proceeds aforesaid, from or after the

time it was first formally presented, as well in preparing the same for presentation to the Senate for the purpose of obtaining an award as afterwards in prosecuting the claim for the amount of said award and other amounts due the Choctaw Nation, either before or after the date of this instrument, and also in full for all expenses at any time incurred by the said Luce, including compensation of such attorneys and counsellors as he may find it necessary to employ to assist in prosecuting said claims before said courts.

And it is further agreed that the stipulations herein set forth shall remain in force until the amount due the Choctaw Nation for the net proceeds aforesaid shall have been recovered and secured and finally adjusted and settled for the parties in interest in manner and form as provided by their treaties with the United States, provided final judgment shall have been rendered on or before the first day of May, in the year one thousand eight hundred and ninety-one. Otherwise the stipulations herein contained shall on that day cease to have any binding force or effect.

And it is further agreed that the legally constituted authorities of the United States are hereby authorized and empowered to pay to said Luce or his legal representatives or assigns the amount that may become due to him under this contract, and his or their receipt therefor shall be a full discharge and acquittance of the United States from and on account of the moneys so paid to said Luce.

In witness whereof the said Choctaw Nation, by Peter Folsom, agent and delegate of said nation, and the said John B. Luce, at the city of Washington, in the District of Columbia, have hereunto set their names on this the 26th day of April, A. D. 1881.

THE CHOCTAW NATION,
By PETER FOLSOM,
Its Delegate.
JOHN B. LUCE.

41 An Act Asking for the Payment of the Judgment of the Court of Claims of the United States in Favor of the Choctaw Nation.

Whereas the Court of Claims of the United States, pursuant to a mandate of the Supreme Court of the United States, did, on the 15th day of December, 1886, render a judgment in favor of the Choctaw Nation for two million eight hundred and fifty-eight thousand seven hundred and ninety-eight dollars and sixty-two cents (\$2,858,798.62);

And whereas the Choctaw Nation, by its delegate, Campbell Leflore, did, by a memorial presented to Congress, demand from the United States the payment of the said judgment;

And whereas the United States have failed to pay said judgment:
Therefore—

Be it enacted by the General Council of the Choctaw Nation assembled, That the said memorial demanding an appropriation for the payment of the said judgment is hereby approved and adopted.

2d. Be it further enacted, That the Congress of the United States is hereby requested to appropriate the full amount of the said judgment, and interest thereon from the date of the rendition thereof, as and for a permanent and continuing appropriation, not subject to lapse or to be covered into the Treasury of the United States; the same to be paid over from time to time, and in such sums and at such places as may be required, directly to the national treasurer of the Choctaw Nation, or to such agent or other person as shall be named in the requisition of the proper authorities of the Choctaw Nation; and the proper authorities of the Choctaw Nation, for the purpose of making such requisition or requisitions, is hereby declared to be the General Council of the Choctaw Nation, or such officer or other person as shall be designated and authorized by an act or resolution of the said general council for that purpose; and such requisition or requisitions, when made, shall be taken and accepted as, and is, and are, hereby declared to be, the requisition of the proper authorities of the tribe, provided for by Article XII of the treaty of 1855.

3d. Be it further enacted, That the foregoing act shall take effect and be in force from and after its passage, and all acts in conflict with this act are hereby repealed, especially an act passed and approved October, A. D. 1873, "defining the duties of the national treasurer in connection with the net-proceeds claim."

This bill is reported to the general council, with the recommendation that it pass.

February 22, 1888.

BENJ. J. WOODS,
Chairman Committee.

Approved February 25, 1888.

T. McKINNEY,
Prin. Chief C. N.

This is to certify that the above and foregoing is a true and correct copy from the original act now on file in this office.

Witness my hand and the seal of the Choctaw Nation this the 9th day of June, A. D. 1888.

[SEAL.]

A. TELLE,
Nat. Sect'y C. N.

42 Bill No. 4, an Act Making Provisions for the Payment of the Amounts Due under the Contracts Made by the Delegation of 1853 with J. B. Luce, Henry E. McKee, and J. G. Blunt, and Directing the National Treasurer to Pay to said McKee and Luce the Amount Due to Each of Them under said Contract.

Whereas the authorized delegates of the Choctaw Nation acting under the authority conferred by the act of the National Council approved November 9th, 1853, and other acts of the National Council passed subsequent to said date, did on the 16th day of July, 1870,

in good faith and to secure and protect the best interests of said nation in regard to the Net Proceed Claim, enter into a contract with Henry E. McKee and J. G. Blunt for the prosecution of said claim of said nation against the United States for a contingent fee of thirty per cent of any amount they might recover and collect from the United States for the benefit of the nation on account of said claims, the said Blunt having died the said McKee associated with himself Jno. B. Luce and other able and experienced lawyers to assist him in the prosecution of said claims under said contract.

And whereas the said delegates at the request of said McKee did on the 26th of April, 1881, enter into a separate contract with John B. Luce for the payment to him of five per cent of the amount recovered from the United States by the prosecution of said claims, which said five per cent to be paid to Luce was by a separate agreement of said McKee stipulated should be credited upon the said thirty per cent and agreed to be paid to said McKee by the nation under said contract of July 15th, 1870.

And whereas the said McKee by means of his own labors and the aid and assistance rendered by his associates in the prosecution of said claims has recovered a judgment against the United States in favor of the Choctaw Nation for the sum of two million eight hundred and fifty-eight thousand seven hundred ninety-eight dollars and sixty-two cents (\$2,858,798.62), and the said McKee and his associates are making proper effort to secure from Congress an appropriation for the payment of said judgment; Now, therefore,

Be it enacted by the General Council of the Choctaw Nation assembled:

Sec. 1. That the said contracts and each of them are hereby acknowledged and recognized as valid and subsisting contracts with the Choctaw Nation duly authorized by law, and the services required by said McKee and the said Luce under the said contracts having been fully performed by them they are by reason of the stipulations entitled to be paid by the Choctaw Nation the respective amounts agreed to be paid by the terms of the said contract and the right to such payment out of the proceeds of said judgment according to the provisions and terms of said contracts is a right protected by the Choctaw Constitution.

Sec. 2. That in order to pay, satisfy, and discharge the obligations of the Choctaw Nation to the said McKee and Luce under said contracts there is hereby appropriated out of whatever sum may be appropriated by Congress for the payment of said judgment, thirty per cent thereof, which said thirty per cent is hereby authorized and directed to be paid as follows, to wit: Five per cent of the said amount appropriated by Congress for the purpose aforesaid, shall be paid to the legal representatives or assigns of the said Jno. B. Luce, deceased, less the sum of thirteen thousand dollars paid to said Luce in his lifetime by the Choctaw Nation, and twenty-five per cent of the said amount appropriated by Congress shall be paid to Henry E. McKee or to his executors, administrators, or assigns.

Sec. 3. And whereas, by two acts of the General Council of said nation provision has already been made for making requisitions by Campbell Leflore or in the event of his death or other disability or refusal to act, then by Edmund McCurtain, for the purpose of making payments as hereinbefore specified and as in said acts provided for.

Now therefore, be it further enacted, that if for any reason there should be a failure to make payments of the said moneys as specifically provided for in said acts to said parties, respectively, as in this act and said other two acts provided for, then it shall be the duty of the national treasurer of said Choctaw Nation to make requisition in favor of said parties respectively, as provided for said two acts for the payment to them, respectively, of said sums named in said acts and said requisitions when made shall be taken to the requisition contemplated and required by article 12 of the treaty of 1855.

And as it can not now be known in what form provisions will hereafter be made by Congress for the payment of the said judgment and interest, it is further enacted that if the said appropriation is so made as that payment can not be made as contemplated by said two acts above named and so made as to require contemplated by said two acts above named and otherwise contemplated in said two acts of said General Council heretofore passed, then it is hereby made the duty of the national treasurer of said nation to pay and is hereby directed to pay or to cause to be paid by such checks, drafts or warrants or by doing such other *such* acts as may be necessary to the said parties, respectively, or to their legal representatives or assigns.

The several sums of money hereinbefore and in the said other two acts referred to and required to be paid, it being the intention of the said General Council by said acts and by this act to provide for and to secure to the said parties, respectively, the sums due to them, respectively, as provided in this said two acts, and to provide for making such payments in conformity with and in obedience to whatever form or made if payment be rendered necessary by said appropriation by act of Congress yet to be made.

Sec. 4. That the sum of fourteen thousand one hundred and seventy dollars shown to be due to the late John T. Cochrane, deceased, by an act of the General Council of November 1, 1861, is hereby appropriated out of any money received from the United States in payment of said judgment and the payment of said amount shall be made said McKee as herein authorized and directed.

Sec. 5. That payment herein directed to be made shall either under this act or said other two acts herein referred to when made as final discharge and satisfaction of all the contracts and obligations of the Choctaw Nation in the prosecution of said claims against the United States.

44 Sec. 6. That this act shall take effect and be in force from and after its passage.

BENJ. J. WOODS,
Chairman Committee.

C. J. ANDERSON,
Recording Secretary.

Approved February 25th, 1888.

By THOMPSON McKINNEY,

P. C. C. N.

Bill No. 5, An Act Making Requisition for Certain Funds Under the Judgment of the Court of Claims of the United States in Favor of the Choctaw Nation.

Be it enacted by the General Council of the Choctaw Nation assembled:

Sec. 1. That Campbell Leflore, the authorized delegate of the Choctaw Nation, be, and he is hereby, authorized and directed for and on behalf of the Choctaw Nation to make requisition upon the proper authorities of the United States in such form as may be required by said authorities for the payment to the national treasurer of the Choctaw Nation the following sums, to wit:

1st. The sum of thirteen thousand dollars, \$13,000, heretofore advanced Jno. B. Luce, attorney for the Choctaw Nation in the Net Proceed Claim.

2nd. Also for the sum of \$38,550.00, thirty-eight thousand five hundred fifty dollars, it being fifty per cent of judgment of the Court of Claims of the United States on the eastern boundary claim, together with interest thereon if interest be allowed by Congress.

3rd. Also the sum of (\$29,724.66) twenty-nine thousand seven hundred and twenty-four dollars and sixty-six cents back annuities recovered under the said judgment, together with interest as above.

4th. Also the sum of \$1,500.00, fifteen hundred dollars, the same being the amount advanced Julius C. Fulsum, one of the heirs or legatees of the delegation of 1853 and 1854, together with interest thereon at the rate of 10% per annum, to the date of payment.

5th. And the sum of \$1,000.00, one thousand dollars, heretofore advanced Campbell Leflore, Choctaw delegate herein named, with interest thereon if interest be allowed—.

Making a total of \$83,774.66, eighty-three thousand seven hundred and seventy-four dollars and sixty-six cents, and such requisitions when made shall be taken and accepted as and is hereby declared to be such an requisition as is required by the twelfth article of the treaty of June 22, 1855.

Sec. 2. That this act shall take effect and be in force from and after its passage.

J. B. WOODS,
Chairman Committee.

Approved, February 25, 1888.

THOMPSON McKINNEY,

P. C. C. N.

An Act to Authorize Requisition to be Made for the Payment of a Portion of What May be Appropriated by Congress in Satisfaction of the Judgment of the United States Court of Claims in Favor of the Choctaw Nation.

Be it enacted by the general council of the Choctaw Nation assembled, That Campbell Leflore, the authorized delegate of the Choctaw Nation, or, in the event of his death or inability to act, then Edmund McCurtain be, and he is hereby, authorized and directed, for and on behalf of the Choctaw Nation, to make requisition upon the proper authorities of the United States, in such form as may be required by such authorities, for the payment to Henry E. McKee of the sum of seven hundred and twenty-eight thousand eight hundred and thirty-nine dollars and sixty-five cents, to which there shall be added, out of whatever may be appropriated by Congress for interest on said judgment, interest on the sum of seven hundred and fourteen thousand six hundred and ninety-nine and 65/100 (dollars) (\$714,699.65), out of whatever may be appropriated by Congress in satisfaction of the judgment of the Court of Claims, rendered on the 15th day of December, A. D. 1886, in favor of the Choctaw Nation; the same to be paid in such sums and at such times and places as shall be requested by said McKee, and such requisition, when made, shall be taken and accepted as, and is hereby declared to be, such requisition as is required by the twelfth article of the treaty of June 22nd, 1855.

2nd. Be it further enacted, That this act take effect and be in force from and after its passage.

BENJ. J. WOODS,
Chairman Committee.

Approved Feby. 25, 1888.

THOMPSON MCKINNEY,
Prin. Chief C. N.

Resolution Authorizing the Appointment of Delegate.

Be it enacted by the general council of the Choctaw Nation assembled—

Sec. 1. That the principal chief, with the advice and consent of the senate, is hereby authorized to appoint a delegate, to proceed immediately to Washington City, to assist in the settlement of the net proceeds claim and carry out fully the provisions of the several acts of this council in reference thereto, and that the national secretary is hereby directed to insert the name of said delegate in the blank spaces in bills number two, three, four, and in bills passed at this session, six, seven, and eight.

Sec. 2. That the sum of one thousand dollars is hereby appropriated out of any money in the national treasury as an advance to Campbell Leflore and the delegate herein to be appointed, to be repaid out of said net proceeds claim when appropriated by Congress.

Sec. 3. That these resolutions take effect and be in force from and after its passage.

B. J. WOODS,
Chairman Committee.

T. McKINNEY,
Prin. Chief, C. N.

Approved Feby. 25, 1888.

46 The Choctaw Nation, to all to whom these presents shall come, greeting:

Know ye, that Edmund McCurtain has been duly appointed a delegate in the Choctaw Nation as per resolution approved Feby. 25, 1888, on the 25th day of February, A. D. 1888.

Now, therefore, I, Thompson McKinney, principal chief of the Choctaw Nation, by virtue of the authority in me vested by the constitution and laws of said nation, do hereby commission him, the said Edmund McCurtain, in and for the office aforesaid, for and during the term prescribed by the laws of said nation. He, the said duty appointed Edmund McCurtain, is therefore hereby authorized and required to do and perform all and singular the duties incumbent on him as a delegate in and for the nation aforesaid, according to law and the trust reposed in him.

In testimony whereof I have hereto set my hand and caused the seal of the Choctaw Nation to be affixed, at Tushka Humma, this 25th day of February, in the year of our Lord one thousand eight hundred and eighty eight.

[SEAL.]

THOMPSON McKINNEY,
A. TELLE,
National Secretary.

By the principal chief:

Bill No. 6, An Act to Provide for the Payment of the Delegates of 1853 for Their Services in the Prosecution of the Net-Proceed Claim, and for Other Purposes.

Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlynn and others, have recovered from the United States agreement in favor of the Choctaw Nation for \$2,858,798.62; and whereas, under the contract of the Choctaw Nation with said delegate dated Nov. 2nd, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now, therefore,

Be it enacted by the general council of the Choctaw Nation assembled:

Sec. 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Le Flore and Edmund McCurtain, delegates and successors to P. P. Pitchlynn and other delegates of 1853, to enable them to pay the ex-

penses and discharge the obligation in the prosecution of said claim, and to settle with the respective distributees of said delegation.

Sec. 2. Be it further enacted, That the sum of \$23,395.39, being the balance due the delegation under the settlement of Nov., 1861, is hereby appropriated out of said fund less 10% on \$1,500.00.

Sec. 3. Be it further enacted, That the said sums shall be paid to Campbell Le Flore and Edmund McCurtain, delegates of the Choctaw Nation, successors to P. P. Pitchlynn and others, and where so paid shall be accepted as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract.

47 Sec. 4. Be it further enacted, That the sum of twenty (20) per cent herein provided to be paid to the delegation aforesaid and the sum of thirty (30) per cent heretofore provided to be paid to the attorneys shall be accepted as full and final settlement of the amt. due under their respective contracts, and that the remaining half or fifty (50) per cent of the amount appropriated for the payment of said judgment shall be retained in the Treasury of the United States subject to the legislation and requisition of the general council of the Choctaw national purposes and for the payment of the claims of individual Choctaws under the twelfth (12) article of the treaty of 1855.

Sec. 5. Be it further enacted, That this act shall take effect and be in force from and after its passage.

B. J. WOODS,
Chairman Committee.

Approved Feb. 25th, 1888.
THOMPSON McKINNEY,
Principal Chief, C. N.
C. J. ANDERSON,
Recording Secretary.

Bill No. 7. An Act to Authorize Requisition to be Made for the Payment of a Portion of what may be Appropriated by Congress in Satisfaction of the Judgment of the United States Court of Claims in Favor of the Choctaw Nation.

Be it enacted by the General Council of the Choctaw Nation assembled, That the principal chief be and is hereby authorized and directed for and on behalf of the Choctaw Nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment to Campbell Leflore and Edmund McCurtain, delegates, successors to P. P. Pitchlynn and others, or to their order, the sum of twenty (20) per cent of whatever may be appropriated by Congress in payment of the judgment of the Court of Claims in favor of the Choctaw Nation rendered, on the 15th day of December, 1886, and in addition thereto the sum of \$23,395.39, the same to be paid in such sums and such times and places as shall be requested by the said Leflore and Edmund McCurtain, less 10% on \$1,500, and such requisitions when made shall be taken and ac-

cepted as and is hereby declared to be such, requisition as is required by the twelfth (12) article of the treaty of 1855.

Sec. 2. Be it enacted that this act shall take effect and be in force from and after its passage.

BENJAMIN WOODS,
Chairman Committee.

Approved Feb. 25th, 1888.
THOMPSON MCKINNEY,
P. C. C. N.
C. J. ANDERSON,
Recording Secretary.

48 By authority of the quoted acts requisition was made, July 9, 1888, in favor of Campbell Leflore and Edmund McCurtain as follows:

To the honorable the Secretary of the Treasury or Secretary of the Interior, or any accounting, disbursing, or other officer of the United States authorized or required to settle, pay, satisfy, or discharge the judgment rendered by the Court of Claims in favor of the Choctaw Nation on the 15th day of December, 1886, as directed by section nine of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with the various Indian tribes for the year ending June thirtieth, eighteen hundred and eight-nine, and for other purposes," approved on the 29th day of June, 1888:

The undersigned, principal chief of the Choctaw Nation of Indians, being thereto duly authorized and empowered by an act of the general council of the Choctaw Nation, approved February 25th, 1888, a copy of which is hereto attached, hereby makes requisition on behalf of the Choctaw Nation for the payment, out of the appropriation to pay said judgment as provided in section nine of the above-entitled act, to Campbell Le Flore and Edmund McCurtain, or to their order, the sum of twenty per cent of the amount of the principal and interest of said judgment authorized to be paid by said section nine of said act; and in addition thereto, for the further sum of twenty-three thousand three hundred and ninety-five dollars and thirty-nine cents (\$23,395.38), less ten per cent on fifteen hundred dollars (\$1,500.00) of said amount.

Dated and signed at the executive office in the Choctaw Nation this 9th day of July, A. D. 1888.

THOMPSON MCKINNEY,
Principal Chief Choctaw Nation.

V.

Said requisition was duly presented, July 13, 1888, by Leflore and McCurtain to the Secretary of the Treasury, together with copies of the acts of the Choctaw Nation authorizing the requisition and a communication in which it was requested that drafts on New York, in

stated numbers and amounts, be issued to their order and forwarded to them at Fort Smith, Arkansas. An account was stated by the proper auditor showing \$638,944.46 as the amount properly payable, which amount was certified by the comptroller, and 55 drafts for \$10,000 each, 17 drafts for \$5,000 each, and one draft for \$3,944.46 were issued to them as requested. Said sum was distributed by Campbell Leflore and Edmund McCurtain, and on the 12th day of January, 1889, at the First National Bank of Fort Smith, Arkansas, Leflore paid to heirs of Samuel Garland the sum approximately of \$60,000, the bulk of the payment being made to Mary E. Rodgers for herself and others in interest.

Leflore and McCurtain prepared and caused to be printed, under date of July 3, 1889, a detailed statement as to the distribution made of the fund received by them, with certain data bearing thereon and a copy of the will of P. P. Pitchlynn, one of the delegates. This statement as printed was in the form of a pamphlet of eight pages, approximately six by eight and a half inches, legibly printed on white paper with a cover of pink. It was entitled on the cover, in conspicuous print, "Disbursement of Delegates 20 per cent of Net Proceeds Claim by C. Leflore and E. McCurtain."

During a session of the Choctaw Council in October copies of this pamphlet were generally distributed by Campbell Leflore as a public document. They were distributed both among members of the council and such of the tribe, not members of the council, as happened to be present. Several copies were filed in the office of the national secretary. A copy in evidence bears in handwriting the name of "George W. Scott" on the margin of the cover. George W. Scott was treasurer of the Choctaw Nation. It is not shown that the statement or report was formally presented to the council or that any formal action thereon was taken by the council, but it does appear that informally there were general expressions of satisfaction with the report. That the money received by Leflore and McCurtain was distributed, as shown by said report, is not disputed. As to many of the payments no reason appears in the record therefor other than as stated in the report, and most of those to whom payments were made were dead when the testimony in the case was taken. As to some small payments it appears that they were on account of money borrowed by some members of the delegation. As to one payment of \$1,500, it specifically appears that the only consideration therefor was the "sympathy" and influence of the payee, and as to many of the others listed under the heads "Paid on promises made at Tushkahomma" and "Paid from memorandum of P. P. Pitchlynn" it appears that the payees had either been members of the general council or were in the habit of attending the sessions; and, as a matter of inference from the whole record, that many payments so listed were in redemption of promises made in return for services and influence in connection with desired legislation.

At the time of the payment made as aforesaid by Leflore, in January, 1889, some objection was made to the amount of the payment by David Crockett Garland, and thereafter attorneys were employed and a suit or suits were instituted, but the courts in which instituted or the disposition thereof is not shown. There was no presentment of any

claim against the nation to the general council or any complaint to the council as to the settlement until several years thereafter. David Crockett Garland was a member of the general council sometime between 1888 and 1891.

Said report and will read as follows:

50

Fort Smith, Ark., July 3, 1889.

To the Choctaws of the Choctaw Nation and the representatives of the delegation of 1853 I submit this itemized statement of the 20 per cent due said delegation and received and disbursed by me:

Total amount received..... \$638,944.36

Cr.

Paid P. P. Pitchlyn..... \$107,311.29

Paid I. Folsom..... \$44,244.29

Collected for Choctaw Nation 1,650.00

45,894.29

Paid Samuel Garland.....

49,894.29

Paid P. Folsom..... 45,894.29

Collected for Choctaw Nation 1,059.10

46,953.39

250,053.26

388,891.10

Paid delegates of 1866 on account with
delegates of 1853:

Allen Wright 2,972.46

John Page 2,972.46

James Riley 2,972.46

Alfred Wade 2,972.46

11,889.84

377,001.26

Paid eastern boundary delegates as per
contract with delegates of 1853:

D. F. Harkins..... 2,586.12

McKee King 2,586.12

Wm. Robuck 2,586.12

7,758.36

369,242.90

Paid Blunt and loyal Choctaws per agreement with
delegates of 1853

25,000.00

344,242.90

Paid from memorandum of P. P. Pitchlynn:

J. F. McCurtain	\$20,000.00	
James Thompson	20,000.00	
Thos. Lanigan	10,000.00	
Wm. Robuck	5,000.00	
W. B. Pitchlynn	4,000.00	
Mishamantubbee	2,500.00	
C. E. Nelson	5,000.00	
McKee King	2,500.00	
Sampson Fulson	5,000.00	
John McKenney	2,000.00	
Peter Noel	1,000.00	
B. L. Leflore	2,000.00	
J. P. Turnbull	1,000.00	
S. M. Grayson	6,000.00	
S. C. Pomroy	10,000.00	
J. J. Weed	396.50	
E. S. Mitchell	3,000.00	
J. W. Denver	5,230.00	
James Trahern	1,000.00	
Adam Christa	2,000.00	
		107,626.50
		236,616.40

51 Paid on promises made at Tushkahomma:

Hy McBride (see his letter)	\$10,000.00	
D. N. Robb	6,270.00	
J. S. Standley	2,500.00	
J. M. Hodges	5,000.00	
Thompson McKinney	5,000.00	
J. J. Phillips (for T. D. A.)	5,000.00	
Green McCurtain	5,000.00	
Judges Dukes	1,500.00	
C. Leflore, services as delegate	20,000.00	
E. McCurtain	5,000.00	
Sam Holsen	1,500.00	
H. E. McKee for Allinton Telle	1,000.00	
Nelson McCoy	1,000.00	
Joel Hudson	1,000.00	
John Garvin	1,000.00	
Wm. Fry	500.00	
C. Leflore was paid for services and money furnished before he was commissioned delegate	13,750.00	
		\$85,020.00
		151,596.40

19

Nine thousand five hundred and eighty-three dollars paid to Col. Pitchlynn by Allen Wright was credited to the nation by Col. Pitchlynn as a payment to the delegation, and used by him according to his statement to pay expenses, for which expenses he is allowed by this settlement \$5,000 a year; therefore the other delegates should receive one-fourth each of this sum, say, \$2,395.75, except \$1,000 less to Samuel Garland for his note held by Mrs. Pitchlynn, viz:

Israel Fulson	\$2,395.75	
Peter Fulson	2,395.75	
Sam'l Garland	\$2,395.75	
Less	1,000.00	
	<hr/>	1,395.75
		<hr/>
Making to be charged to Col. Pitchlynn	6,187.25	6,197.25
		<hr/>
		145,399.15

This balance of \$145,399.15 was paid to H. E. McKee as delegates' part of general expenses.

Fifteen hundred dollars advanced to Julius Fulsom by the nation, with \$150 interest thereon, making \$1,650, charged to the delegation, should be charged to the estate of Israel Folsom as advanced to Julius Fulsom and one-fourth of that sum, or \$412.50, to be credited to P. P. Pitchlynn, Samuel Garland, and Peter Folsom.

Services of Delegates in Washington, D. C., Commencing in Washington in '54.

P. P. Pitchlynn, 1854 to 1881, 23 years; Dixon W. Lewis, 1854 to 1856, 3 years; Sam'l Garland, 1854-5-6, and '69, 4 years; Israel Folsom, 1854-5-6, '61, & '67, 5 years; Peter Folsom, 1861-8-9 and '81, 4 years; C. Leflore, 1885 to 1888, 4 years; E. McCurtain, 1888, 1 year. Compensation for delegates' services commenced in 1866 from the fact that the settlement of 1861 closed all their business to that date and was approved by the council.

52 There is allowed:

P. P. Pitchlynn, from 1866 to 1881, 15 years' service ..	\$75,000.00
Samuel Garland, 1866 and '69, 2 years' service	10,000.00
Israel Folsom, for 1867, 1 year's service	5,000.00
Peter Folsom, for 1868-9, and '81, 3 years' service	15,000.00
C. Leflore, for 1885 to '88, 4 years' service	20,000.00
E. McCurtain, for 1888, 1 year's service	5,000.00

Cochinauer and Harkins' Agreement.

We, the undersigned chiefs, do hereby agree that the delegation, viz., P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, shall receive 20 per cent upon all claims arising or accruing to the nation or to individuals under the treaty of June 22nd, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington, but it is distinctly understood and agreed upon that said delegation are to receive no fees for the lease money nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

In testimony whereof we hereunto set our hands and seals, given this 21st day of November, 1855.

[SEAL.]
[SEAL.]

N. COCHINAUER.
GEO. W. HARKINS.

M'Bride's Letter.

Lehigh, I. T., October 25, 1888.

Hon. Campbell Leflore, Fort Smith, Ark.

DEAR SIR:

Yours of the 2nd to hand. I notice what you say in regard to the Smallwood matter. I don't know who is doing the talking, but I know this much: I collected the amount and paid him his part, just as he and I agreed, before the last session of council was called. I haven't defrauded him out of one cent, and I am certain he understands and knows the agreement, and all was correct.

Respectfully,

HY. McBRIDE.

Report of Leflore and McCurtain to Choctaw General Council.

To the honorable the General Council of the Choctaw Nation:

We beg leave to make the following report in accordance with the acts of the council passed and approved on the 25th day of February, 1888.

The Congress of the United States appropriated \$2,858,798.62, together with interest on said amount at 5 per cent per annum from the 16th day of December, 1886, to the 29th day of June, 1888, being \$219,305.10, making in all \$3,078,103.72 in payment of the judgment of the Court of Claims.

Of this amount there has been drawn from the United States Treasury, on requisitions made in accordance with the acts of council, the following sums, to wit:

Favor of J. B. Luce et al.....	\$129,939.93
Favor of H. E. McKee	783,763.82
Favor of Choctaw treasurer	89,248.36
Favor of Choctaw delegation	638,944.46

Making in all drawn..... 1,641,896.57

53 The balance remaining in the Treasury of the United States, subject to the requisition of the general council, \$1,436,207.15.

The amount drawn in favor of the Choctaw treasurer was forwarded direct to him from the Treasury of the United States.

The amounts drawn by H. E. McKee and J. B. Luce, and the assignees of Luce, were paid to them, respectively, directly from the United States Treasury, and were accepted by them in full and complete satisfaction of all indebtedness to them by the Choctaw Nation, as provided for in their respective contracts in connection with the prosecution of the Choctaw Net Proceeds Claim.

The 20 per cent due the Choctaw delegation was paid directly to us from the Treasury of the United States and was disbursed as follows:

Ascertained amount of expenses and obligations incurred in the prosecution of the claim, \$356,600.30.

Ascertained amount due the delegates for time and personal expenses, \$130,000.

Amount distributed to the delegates over and above the allowance to them for time and personal expenses, \$152,344.16; amounting in all to \$638,944.46.

And we further report that the construction put by the Secretary of the Treasury on the act of council under which requisition was made for the payment of Luce deprived Luce of the interest appropriated by Congress, to which he is clearly entitled, as will appear by the act of council providing for the payment of the contracts of Luce, McKee, and Blount, and the interest so lost to Luce amounts to \$10,975.04, which amount we hope the council will pay to him by a special act.

Respectfully submitted.

CAMPBELL LEFLORE,
EDMUND McCURTAIN,

Choctaw Delegates.

Tushkahomma, C. N., Oct. 9, 1888.

Will of Col. P. P. Pitchlynn, Choctaw Delegate.

In view of the uncertainty of life, I have prepared this memorandum in writing to facilitate the settlement of my personal affairs, and the proper distribution of whatever may be realized by or for me as fees as delegate of the Choctaw Nation, out of the Net Proceeds Claims of said nation against the United States, and out of debts due me from the Choctaw Nation, and of unsettled claims against it hereinafter described.

These matters being all I have now left to dispose of in the event of my death, I hereby request, direct, and authorize Peter Folsom, my codelegate, and John B. Luce, Henry E. McKee, and Mr. S. Temple, who have been associated with me as counsel in the prosecution of said claim, and are therefore familiar with everything in relation to it, and settle with, receipt for, and collect from said nation whatever may become due to me from said nation on any account whatever, and to distribute the same as hereinafter directed as soon

as received by them, without delay or formality of a reference to the probate court, either of the Choctaw Nation or of any State of the United States, my object being to secure all the benefits to be derived therefrom directly to the beneficiaries herein designated without delay or unnecessary expense.

The said claims and matters referred to as follows, viz:

1st. I claim pay from the Choctaw Nation for at least 125 bales of 500 pounds each of ginned cotton, worth at least 25 cents per pound at the close of the war, which was distributed by me among the Choctaws generally on account of the destitution existing among them during the years of the war, from 1861 to 1865, in figures as follows, to wit: 125 bales of cotton, 62,500 pounds at 25 cents per pound, \$15,625; interest from January 1st, 1863, to, say, January, 1881 inclusive, at five per cent (19 years), \$14,843, making a total of \$30,468.

2nd. I claim payment from the Choctaw Nation for 25,000 bushels of corn distributed by me among the Choctaw people on account of the destitution among them during the years 1861-62-63-64-65, five thousand bushels a year, which was worth at least one dollar a bushel then, in figures, as follows: 25,000 bushels of corn at \$1.00 per bushel—\$25,000.

Old Adam (colored) and most of the Choctaws and colored people living in Eagle County know about this corn and cotton furnished Jones and Sampson Folsom were paid by the nation for the cotton furnished by them after my cotton was exhausted.

3rd. I claim that the Choctaw Nation ought to pay me for services rendered in defending it against Oklahoma bills, legislation against it and in behalf of the freedmen, which I defeated in the Senate; and for preventing the survey of their lands, which I did do; and for constant attention to all their other interests outside of the net-proceeds claim, such as the Cherokee and Creek Nations have been paying their delegations at the rate of \$2,500 and more a year constantly since the war, say from the 1st day of January, 1867, to January, 1881, 14 years, at \$2,500—\$35,000. My printed papers will show much of this service.

4th. In addition to these services, I saved to the Choctaws the claim known as the Eastern boundary claim.

In 1830 the commissioners prepared the treaty to make it according to a survey made in 1826. I then had it changed in the treaty to be according to the treaty of 1825.

In 1855 our delegation protected it, and I followed it up and secured the survey of 1858, by which the amount of land in Arkansas was first ascertained.

The claim was covered by our contract of 1855, and I claim 5 per cent of whatever may be realized from it.

5th. Sampson Folsom owes me \$4,000 for money loaned him for which I have his note, dated November 8, 1858, with interest at 8 per cent per annum. I gave this note to my wife a long time ago,

with his knowledge, and his promise to her that he would pay it, and I want it to be paid to her out of whatever may come to him out of the net proceeds.

6th. James S. Kitton, a white man, formerly a trader at Lukfahata, owes me \$500 for cotton, and there is \$1,100 due to him from some Bay Indians, out of which I should be paid, if they get anything.

55 7th. Peter Folsom owes me \$1,000, as shown by an order from Samuel Garland, dated at Doaksville, November 6th, 1861, growing out of the settlement of the delegation there, or at least that amount was due to me from Garland, and I presume that Folsom owed it to him. I never got the money from either of them, and I have forgotten what was said at the time, or why the order was given me, but if Folsom don't pay it then it must be collected out of Garland's fees.

8th. I am entitled in the settlement of the fees, due from the Choctaw Nation to delegates and attorneys, to 5 per cent of whatever is recovered therefrom, and also to an allowance of \$5,000 a year as expenses for the time devoted to that business by me, I having abandoned my home and exhausted everything I had in that way; say 23 years up to this time, making \$115,000.

9th. The Choctaw Nation owes the delegation, as shown by the act of council making the settlement with them November 1, 1861, the sum of eighty-four thousand three hundred and ninety-four dollars and twenty-three cents (\$84,394.23). Of this sum fourteen thousand, one hundred and forty dollars (\$14,140) was due to J. T. Cochrane; so that the balance actually due the delegation was seventy thousand two hundred and fifty-four dollars and twenty-three cents (\$70,254.23), one-fourth of which belonged to me. Of this \$70,254.23, twenty thousand two hundred and sixty dollars (\$20,260) was for goal loaned to the nation at eight (8) per cent per annum. This \$20,260 was paid back to the delegation in 1862 in Confederate money, as I understand, which left forty-nine thousand nine hundred and ninety-four dollars and twenty-three cents (\$49,994.23) due us in 1862.

In 1866 I received from Allen Wright, national treasurer, nine thousand five hundred and eighty-three dollars (\$9,583), according to his figuring, which I used to pay expenses in the prosecution of the net-proceeds claim.

This reduces the amount now due the delegation to forty thousand four hundred and eleven dollars and twenty-three cents (\$40,411.23), my one-fourth of which is ten thousand one hundred and two dollars and eighty-one cents (\$10,102.81).

10th. I owe R. M. Jones about \$1,400, for which I gave him my note about eight years ago, without interest, as a final settlement, the note to be paid out of the first money received out of fees growing out of Choctaw business.

Henry Berthlet, a worthless fellow, as everyone nows, made out

a bill against me of about \$1,100, at Lukfahata (a branch of Jones' store), when, in fact, the whole extent of my trading there was only about \$300.

I don't owe Jones anything except the \$1,400 note. He had collected about \$6,000 or more for me for fees growing out of the Choctaw orphan claims, and had used the money several years, paying me small amounts occasionally, and had paid himself out of that.

In addition to that Jones owed me \$800 for my place on Walnut Prairie. His books were burned with his store one Sunday when the clerks were away at meeting, and he never could make out the account. After Jones' store was burned he said he would not try to collect debts due the store from anybody, because he could not tell what the amounts due were. Upon that principle we settled our account, neither being able to show an account of the items; but I believed then and still believe that he was considerably in my debt.

The only thing I ever got from Jones' store on credit after his books were burned was one pair of spurs for a Sixtown Indian volunteer for the war.

11th. I owe John McKean \$50, for which he has my note.

12th. I owe Dr. Young a bill for attendance upon myself and family.

13th. I owe Dr. Palmer for attendance upon me.

14th. I don't owe any Choctaw Indian anything in the way of a personal debt, and nothing at all except in connection with the Net Proceeds Claim, as I have shown in another statement separate from this, for the information of Folsom and our counsel.

The distribution hereinabove referred to is set forth in my will, bearing this date, January 1, 1881.

P. P. PITCHLYNN.

In the presence of:

H. E. McKEE.

CAROLINE M. PITCHLYNN.

J. B. LUCE.

S. C. M. PITCHLYNN.

VI.

On November 6, 1897, the following bill was introduced in the lower house of the General Council of the Choctaw Nation, passed under suspension of the rules, and referred to the senate:

An Act Appropriating the Balance Due the Heirs of Samuel Garland, Deceased, Delegate of 1853.

Be it enacted by the General Council of the Choctaw Nation assembled:

Sec. 1. That the sum of one hundred and fifteen thousand seven hundred and eighty-six and 65-100 (\$115,786.65) dollars be and is

hereby appropriated out of any funds in the national treasury not otherwise appropriated, to pay the balance due the heirs of Samuel Garland, deceased, delegate of the Choctaw Nation of 1853, by reason of his contract entered into on the 2nd day of November, 1855, by and between the Choctaw Nation and the said Samuel Garland, P. P. Pitchlynn, and others, in collection of what is known as the net proceeds claim.

Sec. 2. Be it further enacted that the national auditor of the Choctaw Nation is hereby directed to issue his warrant for same in favor of Mary E. Rogers, D. C. Garland, Georgia Brice, nee Rogers, Minnie McBride, nee Rogers, Laura Cole nee Rogers, Leona Stealy, nee Rogers, and John M. Rogers, heirs of the said Samuel Garland, deceased, and the national auditor is hereby directed to pay the same.

Sec. 3. Be it further enacted that this act shall take effect and be in force and effect from and after its passage.

57

On the same day the bill was presented to the senate and passed under a suspension of the rules, and referred to the chief. The record does not show the action of the principal chief upon this bill, but it appears from stipulation of counsel that it was vetoed.

VII.

The resolution authorizing the creation of the delegation contained the provision "that in case of resignation or death of any of said delegates, above mentioned, the chiefs have the power to appoint any person to fill such vacancy in his district." The delegation, as created by that resolution, was composed of P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland. Lewis died in or before 1860, and was succeeded by Peter Folsom. The exact date of his appointment does not appear, but a resolution of the general council, approved November 18, 1867, recited that "Whereas P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom were duly appointed delegates," etc.

Samuel Garland died in 1870; Israel Folsom, died about 1880 and Pitchlynn died about the early part of 1881. The exact date of the death of Folsom and Pitchlynn are not shown, but it satisfactorily appears that both died before April 26, 1881. A contract on the last named date was executed in the name of the Choctaw Nation "by Peter Folsom, its delegate," who was then the sole survivor.

Campbell Leflore was thereafter appointed a delegate, the exact date of his appointment not being shown, but it appears that it was in or probably before the year 1885.

Peter Folsom died probably about 1885, the exact date of his death not being shown, but it satisfactorily appears that he died before February 25, 1888. Whether he was yet in life when Leflore was appointed does not appear.

An act of the General Council, approved February 25, 1888, refer

Leflore as "the authorized delegate of the Choctaw Nation," and appears from the published laws of the Choctaw Nation that he was officially recognized as "its delegate" before that time. By resolution of that date the principal chief was authorized to appoint a delegate "to assist in settlement of the net proceeds claim, and carry out fully the provisions of the several acts of this council in reference thereto"; and thereafter on the same date Edmund McCurtain was appointed and commissioned.

Thus the delegation from November 9, 1853, to the death of Lewis or before 1860 was composed of P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland. From some date shortly after the death of Lewis and until the death of Garland in 1870 the delegation was composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom. After the death of Garland and until the death of Folsom, about 1880, the delegation was composed of P. P. Pitchlynn, Israel Folsom, and Peter Folsom. After the death of Israel Folsom and until the death of Pitchlynn the delegation was composed of P. P. Pitchlynn and Peter Folsom. After the death of Pitchlynn, early in 1881, Peter Folsom was for a time the sole delegate.

Whether Campbell Leflore was appointed before the death of Peter Folsom does not appear; neither is the date of the death of Peter Folsom shown, but it does appear that for a time after his appointment and subsequent to the death of Peter Folsom, Campbell Leflore was the sole delegate. After the appointment of McCurtain on November 25, 1888, the delegation was composed of Campbell Leflore and Edmund McCurtain.

For a time, not definitely shown, after the creation of the delegation, Pitchlynn was its "business manager." He was succeeded as business manager by Peter Folsom.

There is no showing in the record as to the specific services rendered by the delegation or any member thereof in procuring the adjustment of this matter, independent of the services of the attorneys employed by them and paid by the nation, and there is no testimony as to the value of the services rendered.

VIII.

The constitution of the Choctaw Nation contains the following provisions:

Article IV.—Judicial Department.

Sec. 1. The judicial power of this nation shall be vested in one supreme court, in circuit and county courts.

* * * * *

Sec. 5. The circuit courts shall be composed of one circuit judge in each district, and shall have original jurisdiction in all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony, and original jurisdiction of all civil cases which shall not be cognizable before the judges of the county, until otherwise directed by law, and

original jurisdiction in all matters of contracts and in all matters of controversy where the same is over fifty dollars. It shall hold its term at such times and places in each district as are now specified by law or may hereafter be provided.

Sec. 6. The circuit courts shall exercise a superintending control over the county courts, and shall have power to issue all necessary writs and process to carry into effect their general and specific powers under such regulations and restrictions as may be provided by law.

An act to organize and establish the circuit courts of the Choctaw Nation, and to define their power and jurisdiction, approved October 24, 1860, contains the following provisions:

* * * * *

Sec. 4. Be it further enacted, That the circuit courts of law in the several counties of the nation shall have original jurisdiction of all suits and actions for the recovery of money founded on any bonds or other written contracts when the principal of the sum in controversy exceeds fifty dollars, and all causes, matters and things arising under the constitution and laws of this nation which are not expressly cognizable in some other court established by law; and said circuit court shall have power to hear and determine all prosecutions in the name of the nation, by indictment for treason, murder,

and all other felonies, crimes, and misdemeanors committed
59 within their respective jurisdictions, except such as may properly belong to county court or in some other court of the nation or of the United States; as also to hear and determine all prosecutions by information as are designated in the constitution; and, moreover, shall have and exercise all the powers incident or belonging to a court of oyer and terminer, and general jail delivery, and to do and perform all other acts properly pertaining to a circuit court of law; and the judges of said courts and each of them shall have power either in vacation or term time, to grant writs of habeas corpus, and all other remedial writs returnable according to law into any or either of said circuit courts.

Sec. 5. Be it further enacted, That the said circuit courts shall have and possess original jurisdiction over all matters of divorce, and for the foreclosure of mortgages; and the judges of said courts shall have power, either in vacation or term time, to grant writs of injunction, to stay waste, to enjoin execution of a judgment, or to stay proceedings at law; to grant writs of ne exeat, and all other remedial writs returnable to a court of law.

IX.

Samuel Garland, claimants' decedent, was a member of the Choctaw Tribe of Indians and a citizen and resident of the Choctaw Nation in the Indian Territory, and departed this life during the year 1870, leaving a last will and testament by which he bequeathed to his wife, Mary P. Garland, his interest in a claim against the Choctaw Nation for services as a member of the delegation of 1853, referred to as the "net proceeds."

Said Mary P. Garland died in the year 1886 or 1887, leaving a last

will and testament, by which she bequeathed to her grandson, David Crockett Garland, one-third of all moneys due from the United States Government or the Choctaw Nation to her deceased husband, Samuel Garland, for services rendered as a delegate of the Choctaw Nation in the settlement of the net proceeds claim; one-third of said moneys to her daughter, Mary Eliza Rodgers; and the remaining one-third of said moneys, in equal shares, to the heirs of said Mary Eliza Rodgers, her grandchildren.

Said Mary Eliza Rodgers died intestate in 1903, leaving surviving her five children, Georgia C. McCaffree, Laura Cole, Leona Stealey, Minnie L. Thomas, and John M. Rodgers, as her only heirs at law and next of kin. Said John M. Rodgers is mentally unsound, and Walter S. Rodgers is his guardian.

Said Laura Cole departed this life and left her surviving as her only heirs at law and next of kin, her husband, Preston B. Cole, and three children, Bonnie May Cole, Rodgers Little Cole, and Prestley B. Cole, jr.

Said Leona Stealey departed this life and left her surviving as her only heirs at law and next of kin, her husband, Charley L. Stealey, and three children, Goodwin B. Stealey, Lorenzo P. Stealey, and Cathleen Stealey.

Said Minnie L. Thomas, after the death of her husband, Ab Thomas, married William P. McBride, and thereafter departed this life leaving her surviving as her only heirs at law and next of kin, her husband, William P. McBride, and two children, Edward Thomas and Pleasant McBride.

Said David Crockett Garland departed this life on January 28, 1899, and left him surviving as his only heirs at law and next of kin, his wife, Ellen Garland, and four children, Thomas A. Garland, Leonidas M. Garland, Margrette Garland, and Ellen Garland. The last named, Ellen Garland, departed this life without issue after the commencement of this action.

Conclusion of Law.

Upon the facts found the court concludes, as matter of law, that the plaintiffs are not entitled to recover and that their petition ought to be, and it is hereby, dismissed.

Opinion.

DOWNNEY, *Judge*, delivered the opinion of the court:

Congress has directed this court to adjudicate the claims of "Samuel Garland, deceased," against the Choctaw Nation, and to render judgment in such amounts, if any, as may appear to be equitably due, said judgment, if any, "in favor of the heirs of Garland" to be rendered on the principle of quantum meruit and paid out of the funds of the nation.

The record is very unsatisfactory in many respects and as to some

questions involved leaves much to be desired. The duty of the court to make such specific findings as will present every feature of the case has therefore been a difficult one, impossible of discharge in form entirely satisfactory, but met as the circumstances seemed to require.

The Choctaw Indians, during the period involved in this transaction were a "nation," having a constitution, executive and administrative officers, a legislative body of two branches, and a judicial system. Entertaining the belief that they had valid claims against the United States, and particularly, so far as this case is concerned, on account of lands east of the Mississippi River theretofore ceded by them, the general council, by resolution approved November 9, 1853, appointed P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland delegates to institute a claim against the United States and settle the same by treaty or otherwise, the resolution providing for the appointment of a successor in case of the death or resignation of any of the said "delegation."

Deaths, vacancies, and appointments occurred at different times, and seven men, during its life, served as delegates. Beginning with a full delegation of four, there were for a time three, then four, then three, then two, then one, then one, a new delegate, and finally two. There was no provision as to compensation when the delegation was created, but an instrument purporting to have been executed November 2, 1855 by "the undersigned chiefs," provided that the delegation, naming the then members, should receive 20 per cent upon all claims arising under the treaty of 1855 for their services in negotiating that treaty and for other services to be rendered thereafter at Washington. Following the last of these signatures are the initials

61 "P. C. C. N." understood to mean "Principal Chief Choctaw Nation," and a notation follows indicating approval as required by the third section of the schedule of the constitution, October 18, 1868, which section required all contracts theretofore made and approved under existing laws or resolutions of the general council to be approved by the principal chief. It is then understood that instrument was executed by two "chiefs" November 2, 1855, and approved by the "Principal Chief," October 18, 1868, although it does not appear that such a contract had ever theretofore been authorized by the general council. However, subsequent legislation of the general council set out in the findings seems to recognize the existence of such an obligation.

The treaty of 1855 was negotiated and for more than 30 years thereafter efforts, continuous or spasmodic, were being made to secure a settlement. Action was had by the Senate, an account was stated by the Secretary of the Interior, an action in this court, an appeal to the Supreme Court, a judgment by this court for \$2,858,798.62, and finally an appropriation. Just what service was rendered by the delegates during all of this time does not appear, but several attorneys were under contract who presumably attended to the litigation and who were paid large fees. All of the original delegates had died long before the consummation of the matter.

When the litigation was terminated, but before Congress had ap-

appropriated to pay the judgment, Campbell Leflore, the sixth appointee as a member of the delegation, was the sole delegate and the principal chief, by an act of the general council, was authorized, "with the advice and consent of the senate," to appoint to delegate "to proceed immediately to Washington City, to assist in the settlement of the net proceeds claim," etc.; and on the same day, February 25, 1888, Edmund McCurtain was appointed and commissioned. Another act of the general council of the same date, February 25, 1888, directed the principal chief to make requisition for 20 per cent of the judgment, and a further sum named in favor of "Campbell Leflore and Edmund McCurtain, delegates, successors to P. P. Pitchlynn and others." After the money had been appropriated by Congress a requisition was made in their favor; it was presented and honored and by a considerable number of drafts drawn and mailed as requested by them, they were in due time paid \$638,944.36. They made distribution thereof as shown by a report set out in the findings; and to that distribution the plaintiffs except, contending that many payments made were unauthorized; that there is a large additional sum due them—viz, the difference between the amount received by them and one-fourth of the whole fund; that Leflore and McCurtain were the "agents" of the nation in making such distribution, for whose unauthorized acts the nation is liable and by which they are not bound, and that therefore they are entitled to recover from the nation the sum sued for.

This statement of the case is but a brief summary and reference must be had to the findings for the details of the transaction there set out as to furnish as complete a history thereof as the record permits.

There are several questions presented by counsel and proper for consideration and to which brief reference will be made; but there seems to be one underlying question, the determination of which adverse to the plaintiffs must foreclose their right of recovery, and upon which the court bases its conclusion. Were Leflore and McCurtain, when they collected and distributed this money, merely the "agents" of the Choctaw Nation, for whose misapplication of the fund, if they did misapply it, the nation was liable, or were they then the delegation, the successors of the original delegation, standing in such relation to the nation and to other members of the delegation or their beneficiaries that the payment made to them, as it was made, is to be held an acquittance of the nation. If they were merely the agents of the nation appointed to discharge obligations of the nation to other individuals, and entrusted with money for that purpose, and other delegates or their beneficiaries stood in the relation of individual claimants, it would then of necessity be incumbent to inquire and determine whether there was misapplication of the fund and a failure, by reason thereof, to award and pay plaintiffs that to which they were entitled.

This transaction, from the appointment of the original delegation to the issuance of the requisition to Leflore and McCurtain on which the money was paid to them, covered a period of more than 35 years. While it probably was not anticipated that such a length of time would be required to procure a settlement, the Indians were familiar

with the difficulties and delays attendant upon the adjustment of their claimed rights, they were in this instance seeking to assert rights under a treaty then 23 years old, they must have anticipated that a speedy adjustment might not be procured and to guard against contingencies liable to happen with the lapse of time they provided in the resolution creating this delegation for successors in the event of death or resignation. The resolution itself justifies the conclusion that they were not simply appointing the four men named, as individuals, to the discharge of a designated duty, but that they were creating a continuing body, which they saw fit to call a "delegation," and to membership in which the four men named were the first appointees. They were individually, it is true, "appointed delegates," but they were given broad powers, not only with reference to the claim involved here, but with reference to "all and every claim and interest of the Choctaw people against the Government of the United States," succession was provided in case of resignation or death of any of the said "delegation," and the chiefs were required to inform the Government at Washington of the appointment of "the delegation." A "delegation" may be said to be a body composed of "delegates" and "delegates" are members of a "delegation." Had the collective word "commission" been used, and the appointees called "commissioners," the view under discussion might, by reason of common usage, the more readily occur.

Vacancies occurred. The first was by reason of the death of Lewis, and Peter Folsom was appointed. The first act set out in the findings subsequent to the appointment of Peter Folsom as successor to Lewis, an act approved November 18, 1867, is significant in some of its provisions. It recites that whereas Pitchlynn, Israel Folsom, Garland, and Peter Folsom were appointed and commissioned delegates of the Choctaw Nation to institute a claim against the United States for pay and remuneration for the country ceded east of the Mississippi River (the same claim referred to in the resolution first creating the delegation); and whereas said delegates did effect a basis for payment of said claims as mentioned in the 11th and 12th articles of the treaty of June 22, 1855 (antedating the death of Lewis), "the delegates composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, are hereby notified," etc. Although the personnel is changed it is recognized as the delegation in charge of the claim referred to in the original resolution and this body with a successor member is credited with effecting the basis of settlement provided in the treaty of 1855. This can hardly be regarded as an inadvertence or the blundering of an ignorant people. These people have shown too conclusively their aptitude with reference to this matter. Rather does it indicate their theory as manifest throughout this whole period that the things done and to be done were the work of a duly constituted and continuing body and the word "delegates" as used in this act is evidently used in a collective sense.

Following the deaths in order of Garland, Israel Folsom, and Pitchlynn, there were no appointments to fill the vacancies; but the authority of the remaining delegate, Peter Folsom, was recognized and significantly so. Under date of April 26, 1881, a con-

tract, set out in the findings, with John B. Luce, attorney, for the prosecution of the net proceeds claim, is executed in the name of the Choctaw Nation "By Peter Folsom, its delegate." In the recital he refers for his authority to the resolution of November 9, 1853, and a subsequent resolution. An act of the General Council of February 25, 1888, reciting this contract among others, specifically recognized them and each of them as valid and subsisting contracts duly authorized by law and refers to the "delegates" executing the contracts as acting under the authority conferred by the act of the National Council approved November 9, 1853, and other acts. As to the vacancies which remained unfilled it may be suggested as fairly appearing from the record that the work remaining to be done was work to be handled by the attorneys rather than delegates and it may have been thought that, under the attendant circumstances there was no occasion for maintaining a full delegation.

Campbell Leflore was appointed a delegate, whether before or after the death of Peter Folsom does not appear, but probably after, since the record contains no showing of joint action by them. His appointment does not appear in the record but in several acts of the council entrusting to him financial transactions of considerable magnitude, he is officially designated as "the authorized delegate of the Choctaw Nation." Aside from what appears in acts hereafter to be referred to the inference is justified that he was appointed to the delegation provided for by the resolution of 1853 under the authority therein contained.

When the general council was making provision for the settlement of the net proceeds claim and the distribution, after the money should become available, of such portion as was necessary to pay obligations, it authorized, probably to be construed as directed, the appointment of a delegate "to proceed immediately to Washington City" and assist in the settlement, much as the old delegation in 1857 had been directed "to proceed to Washington City as soon as practicable," and Edmund McCurtain was appointed. It is interesting

to note the formality of the appointment, for he was not only
64 to be appointed "with the advice and consent of the Senate" but he was "commissioned" in due form. He was not appointed an agent merely, but he was appointed "a delegate" and commissioned "in and for the office aforesaid."

An appropriation act defined the then status of Leflore and McCurtain by providing, after appropriating the 20%, that it should be paid to "Campbell Leflore and Edmund McCurtain, delegates and successors to P. P. Pitchlynn and other delegates of 1853" and the act authorizing the principal chief to make requisition provided that it should be in favor of "Campbell Leflore and Edmund McCurtain, delegates, successors to P. P. Pitchlynn and others."

What service, if any, was required of these delegates at Washington in connection with the procuring of the appropriation does not appear, but when McCurtain was appointed the appropriation had not yet been made, although the judgment was two years old, and, Leflore probably being in Washington, McCurtain's direction to proceed thence and assist was probably intended as a direction to "assist in the settlement of the net proceeds claim" by procuring an appro-

priation, since they were not furnished with a requisition until several months thereafter and could not have been sent there at that time to draw money not yet appropriated, and as to which the proper authority had not yet been issued them.

What has thus far been said has perhaps assumed undue length, but it seems to be justified because of the light it throws on the status of the delegates and the delegation during the whole period, as viewed by the Choctaw Nation, and hence upon the status of Leflore and McCurtain when they received this money and made the settlement in question. During the whole period there had been delegates or a delegation recognized as in charge of the net proceeds claim by virtue of the resolution of 1853 and always recognized as the delegation created by that resolution or their successors; and it seems quite clear that when requisition was directed to be made in their favor for the money deemed due the delegation and its creditors the Choctaw Nation assumed to deal with them as the then delegation, delegates as they were described, successors to Pitchlynn and others, delegates of 1853.

It is to be noted in this connection that when the general council appropriated this money and directed it to be paid to Leflore and McCurtain, delegates, successors, etc., they provided in the act that it should be accepted "as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract." These people were Indians, it is true, but many of them were men of affairs, men of business acumen; some had attained some degree of legal knowledge, at least such as might be required in dealing with their own affairs, and it is unreasonable to assume that they would undertake to discharge a recognized obligation by turning money over to persons who were strangers to the transaction and who were without authority from the obligees and attempt to provide that such procedure should work a discharge of the obligation. There is no apparent escape from the conclusion that the nation, represented by its general council and its principal chief, assumed to deal with the proper representatives of the delegation,

65 tion, created in the first instance by the resolution of 1853 and it is our opinion that Leflore and McCurtain were then properly acting in that capacity and not as mere agents of the nation with reference to this particular payment.

If this conclusion as to the status of this delegation and of Leflore and McCurtain, its then membership, as to the Choctaw Nation be correct, the question may yet be suggested as to their relation to the plaintiffs. Were they bound by the payment made to Leflore and McCurtain, and was the nation thereby discharged from any further demands by them?

They are suing as the heirs of Samuel Garland and they can have no greater right than to stand in his stead as to any sum due him. There never was any delegation of power to or any contract with Samuel Garland individually. He was simply one of the four delegates first appointed a member, with three others, of the delegation created by the resolution of 1853. That delegation was a creature of the nation, deriving its life and its authority from an act of the nation's duly constituted legislative body. Neither Garland nor any

ther of the appointees had any right to stipulate as to constitution, power, term of service, or compensation of the delegation. It was in no sense a transaction which gave right of negotiation as to contractual relations. He or any other appointee might presumably have declined appointment, but having accepted appointment he accepted all the conditions attendant upon the creation of the delegation. He thus accepted appointment to a delegation which he must have known was intended to be a continuing body and as to the membership of which the right of substitution was expressly declared. Indeed he was necessarily cognizant of the exercise of this right. He was yet in life and a member of the delegation when Lewis died and Peter Folsom was appointed a delegate. He served on the delegation as thus reconstituted and after the substituted member had become its "business manager" and he necessarily knew of subsequent legislation referring to the other two survivors, himself and the substituted member as "the duly appointed delegates and commissioned as such" in connection with the prosecution of the net proceeds claim, and referring to the delegates as "composed of" Pitchlynn, Israel Folsom, himself and Peter Folsom. He knew, could not but have known, that these delegates, or this delegation, an immaterial matter of phraseology, were, although of different personnel, the delegates or delegation authorized by the resolution of 1853. He accepted and continued service under such circumstances as must necessarily imply full knowledge on his part that he was but a member of a continuing body with succession in membership and liable to complete change of personnel. No doubt, if his mind adverted at all to the subject before his death, he assumed that a successor would be appointed to his place on the delegation.

By Garland's will his "interest in the net proceeds" went to his widow. Assume that John Doe had been immediately appointed his successor and that thereafter, before the death of any of the other then delegates, the net proceeds money had become available and a requisition had been authorized and drawn in favor of Pitchlynn, Israel Folsom, John Doe, and Peter Folsom, the then delegates, successors to the delegation of 1853, just as it was authorized and drawn in favor of Leflore and McCurtain, and upon settlement of obligations of the delegates and distribution of the remainder, Mrs. Garland had maintained that some of the payments of assumed obligations made by the delegates were improperly made by reason of which the amount awarded her was less than she should have received, is it likely to have been seriously contended that such a situation furnished a basis for a claim by her against the Nation? The analogy is easily carried on to the plaintiffs and Leflore and McCurtain, the then delegates, successors, etc. We incline to think that had the vacancies in this delegation been filled as they occurred, as there was authority for doing, so that there was at all times a full delegation and there had been in existence, when this payment was about to be made, such a full delegation and the payment had been made to such full delegation just as it was to Leflore and McCurtain, this question would not likely now be before us. And yet such an existent delegation could have stood in no other relation to the Nation and these plaintiffs than did Leflore and McCurtain.

For what it is worth the apparent acquiescence of these plaintiffs in the action of the Choctaw council providing for the payment of this money to Leflore and McCurtain is for consideration, for even though acquiescence indicated by knowledge coupled with failure to protest might not amount to estoppel, it would have weight as indicating recognition of the propriety of the action taken.

These people were not in ignorance of this claim. It was the subject of testamentary provision in the wills both of Samuel Garland and his widow, and the subject, it appears, of family discussion. After prolonged litigation, of which they must have known, judgment for the large sum involved in the net-proceeds claim was rendered by this court December 15, 1886, and appropriation by Congress to pay this judgment was made by an act approved June 29, 1888, more than two years after. The appropriating act of the General Council directing payment to Leflore and McCurtain "as a complete payment and final discharge" and the act directing requisition in their favor were passed February 25, 1888, before the appropriation by Congress. The requisition was not drawn until July 9, 1888, presented July 13th, settlement by auditor July 24th, certified by Comptroller July 27th and drafts mailed July 28th. The actions of the General Council several months before the money was paid, were by public acts in regular session. It was no doubt a matter of public notoriety. It appears that many members of the tribe habitually attended the sessions of the council. Crockett Garland, at least, of those in interest was a man of prominence in the Nation. He became a member of the General Council either in 1888 or soon after. He must have known that from February 28, 1888, Leflore and McCurtain were the recognized delegates and that the money, when appropriation had been made by Congress, was to be paid to them. The only interference is that he and they either acquiesced in the action taken or recognized the fact that it was an authorized and proper action on the part of the council furnishing them no ground of protest. It is not incumbent on us to suggest action which might have been taken if they regarded the procedure as unauthorized.

We are of the opinion that the payment made to Leflore and McCurtain served to discharge the Nation from any further
67 liability in this matter to the delegation or any member thereof or their representatives and on this ground it is ordered that the case be dismissed.

It is perhaps well to mention and possibly comment briefly on other questions in this case, not decided, since the conclusions as to the one discussed is sufficient for the purpose, and as to which there may or may not be difference of opinion.

If the conclusion reached on the question discussed is erroneous, then the question as to whether the distribution made by Leflore and McCurtain was authorized is for consideration. And in that connection the plaintiffs, not questioning that distribution was in fact made as shown in the report set out in the findings, contend, first, that the report is not admissible in evidence because not shown to be official and presented to and acted on by the general council; and, second, that payments therein shown were unauthorized. For con-

sideration in connection with this whole transaction is its thoroughly "open and above board" character. The public character of the acts of the council and the requested procedure as to the payment of the money have been referred to. The payments to the Garlands were made personally, after their presence had been requested, and were made at the First National Bank in Fort Smith. There was no duty imposed to prepare and print and circulate a report as to the distribution of the 20 per cent, but it was done, and done in such a way as to give the greatest possible publicity.

It is shown that copies of the report were distributed generally at a meeting of the general council, both to members of the council and to nonmembers, and that copies were filed in the office of the national secretary. A copy in evidence bears in handwriting the name of a man shown to have been national treasurer. There was no requirement that a detailed report as to the distribution of the 20 per cent should be submitted to and acted on by the general council. Instead the theory upon which the payment was made to Leflore and McCurtain would seem to preclude any occasion for a report to the council which should be the subject of approval or otherwise as to the details of the distribution. The payment was made to them as the delegates, successors, etc., was deemed by the council and stipulated to be "a complete payment and a final discharge," and it was made "to enable them (*italics ours*) to pay the expenses and discharge the obligation in the prosecution of said claim, and to settle with the respective distributees of said delegation." It is hard to see what more could have been done to give publicity to this settlement, and the copy of the report offered in evidence is identified as one of the printed copies generally circulated as described. It seems to have been in the nature of a public document, complete within itself for the purposes intended.

Assuming that it is properly in evidence it is not disputed that it correctly shows the distribution made of the 20 per cent. Contention is that some of the payments made, and particularly those under the heading "Paid from memorandum of P. P. Pitchlynn" and "Paid on promises made at Tushkohomma," were unauthorized. But little specific information appears in the record as to the basis of those payments. One, made to a man of prominence and influence, is shown to have been predicated alone, as to service rendered, on the "sympathy" of the witness. Many of the payees are shown to

68 have been members of the council or those who were in the habit of attending meetings of the council. Pitchlynn in his will refers to debts in connection with the net-proceeds claim which he says he has shown in a separate statement for the information of Folsom. Pitchlynn had been business manager for several years and active in the work of the delegation, and had been succeeded as business manager by the Folsom referred to. There is some evidence of indebtedness on the part of members of the delegation for borrowed money, but as to many of these payments the contention of counsel for plaintiffs that they were in the nature of bribes to members of the council and payment to lobbyists is probably correct. That theory at least is better sustained than any other.

Plaintiff's counsel, in their brief, say:

"It is well-known history of the Choctaw Nation that many members of the council were corrupt; paid lobbyists were always present when the council was in session securing improper legislation upon payment of fees. In order to prove this it is only necessary to read the purported report filed by Campbell Leflore, and the testimony of ex-Gov. Dukes, former governor of the Choctaw Nation and one of the political leaders."

Dukes is the witness referred to as testifying to the payment to him of \$1,500 for "sympathy." And it may be added that when the council referred in the appropriating act to the payment of expenses and discharge of obligations it probably had in mind obligations of this character, the existence of which were open and notorious. Assuming it to be established, as may at least be fairly inferred, that many of these payments were in fact of this character, can these representatives of Samuel Garland recover from the nation on account thereof? Could Samuel Garland, if yet in life, recover from the nation because delegates in making settlement had redeemed such an obligation of his, on the ground that it was an illegal obligation? He might contest the right of the obligee to demand and receive payment, but having participated in such an illegal transaction he could hardly, after payment, make its illegality the basis of a claim against the nation. Can his representatives assert any right which he could not himself have asserted?

The judgment, if any, in this case, is directed to be rendered "on the principle of quantum meruit for services rendered and expenses incurred." There is no testimony either as to the specific service rendered by Samuel Garland or its value. There is an alleged "contract" in the record—an ex-parte document—signed first by two chiefs, who had no authority, and approved 13 years afterwards by the principal chief "as required by the third section of the schedule of the constitution," although authority so to do does not appear. However, subsequent legislation of the general council recognizes the existence of a contract under which the delegates were to receive 20 per cent of the net proceeds claim.

When Congress confers special jurisdiction on this court in such language as that used in this instance, it must be deemed to have intended to withhold any jurisdiction to adjudge a recovery on express contract and the court must exercise only the jurisdiction conferred. The contract, if there was a contract, although not the basis of a recovery, might be admissible, in the absence of other evidence, as evidence *prima facie* of the value of the services contemplated thereby. But, even in the absence of other evidence, could the recognition of the contract as admissible evidence go far enough in this case? If admissible as proving the value of the services does it not go to the value of the services of all the delegates? The theory of the action is that these plaintiffs or the heirs of Garland were entitled to one-fourth of the whole compensation of 20 per cent. This theory can hardly be sustained. It must be predicated on the idea that compensation went alone to the four delegates first appointed and in equal parts. There were seven delegates

in all. Even eliminating Leflore and McCurtain there were five theretofore. Lewis had died before 1860 and Peter Folsom had served many years and had been the head of the delegation, the "business manager," and yet the theory stated, carried to its logical conclusion, would entitle Lewis to one-fourth of the whole compensation and give Peter Folsom no part at all. There is no testimony as to the extent of the service actually rendered by Garland who died several years before the consummation of this matter, and the question is whether there is any basis for a quantum meruit recovery on account of his services. Payments made to him and his "heirs" were sufficiently large to compensate for a considerable service.

But counsel present another theory under which they contend that if the court should consider the report of Leflore and McCurtain and conclude that some of the items shown therein should have been paid, the plaintiffs, in that event, should recover one-fourth of the amounts under the heads "Paid from memorandum of P. P. Pitchlynn" and "Paid on promises made at Tushkohomma." In other words, the court, conceded the right to charge against these plaintiffs some payments made by Leflore and McCurtain, as shown by their report, must hold the nation liable for other payments made because the obligations discharged were incurred for an illegal and a corrupt purpose, and this, too, notwithstanding participation in the corruption. We have commented on the principle involved.

It is contended that the remedy of the plaintiffs, if they were entitled to a remedy, was against Leflore and McCurtain in the courts of the nation or other courts having jurisdiction. The point is mentioned without comment, except the suggestion that there is some testimony indicating that that was the view of the matter first entertained. Whether an action was ever prosecuted to conclusion does not appear.

The fact that some eight years after this settlement by Leflore an act passed both houses of the Choctaw Council providing for the payment to these plaintiffs, or some of them, of \$115,786.65 as the amount due them by reason of the contract of November 2, 1855, is cited as amounting to a recognition of an indebtedness on the part of the nation in that amount. The act was vetoed and did not become a law. Aside from that the court is always entitled to weigh the evidence, and may be excused if it should in that connection entertain a suspicion that the passage and approval of that act would have given rise to many obligations no better founded than those paid by Leflore about which complaint is made.

The action is by "The heirs of Samuel Garland." The jurisdictional act authorized an adjudication of the claims "of Samuel Garland, deceased," but provided that the judgment, if any, "in favor of the heirs of Garland" should be paid, etc. Garland died testate, this claim passing to his widow, Mary P. Garland. She died testate, and the beneficiaries under her will are as stated in the findings. They are the same persons who would have been the heirs of Samuel Garland had he and his widow both died intestate, but their interests under the will of Mary P. Garland are different from what their interest would have been in the other event. May the apparent legislative intention cure the inaccuracy?

Judge Hay, Judge Barney, Judge Booth, and Chief Justice Campbell concur.

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VI. Judgment of the Court.

At a Court of Claims held in the City of Washington on the Seventeenth day of February, A. D., 1919, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge and decree that the claimants the heirs of Samuel Garland, deceased, are not entitled to recover and shall not have and recover any sum in this action of and from the defendants, the Choctaw Nation; and that the petition be and it hereby is dismissed; and it is further ordered, adjudged and decreed that the defendants, the United States, shall have and recover of and from the claimants the cost of printing the record in this case in this court, to be collected by the Chief Clerk, as provided by law. And it further appearing that no printing has been done by the court in this case no costs are taxed.

BY THE COURT.

VII. Proceedings After Entry of Judgment.

On April 12, 1919, the claimants filed a motion for additional findings of fact and to amend the court's findings of fact.

On April 17, 1919, the claimants filed a motion for a new trial.

On May, 5, 1919, the court filed an order allowing in part plaintiff's motion for additional findings; inserting additional page in former findings, and overruling plaintiff's motion to amend findings and for new trial. Finding as thus amended and the opinion to stand.

Note: These findings, as amended by above order, appear in this record beginning at page 30.

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VIII. Claimant's Application for and Allowance of an Appeal.

Comes the plaintiffs by their attorneys and pray an appeal to the Supreme Court of the United States from the judgment of this court on the 5th day of May, 1919, dismissing the petition herein filed.

HARRY PEYTON,
JAMES K. JONES,
WM. N. REDWINE,
Attorneys for Plaintiffs.

Filed June 2, 1919.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

June 2, 1919.

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Court of Claims.

No. 30,252.

THE HEIRS OF SAMUEL GARLAND, Deceased,

vs.

THE CHOCTAW NATION.

I, Fred C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the court by Downry, J.; of the judgment of the court; of the claimants' application for, and *and* the allowance of, an appeal to the Supreme Court of the United States.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Washington City, this thirteenth day of June, A. D., 1919.

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

[Seal Court of Claims.]

Endorsed on cover: File No. 27,171. Court of Claims. Term No. 416. The Heirs of Samuel Garland, deceased, appellants, vs. The Choctaw Nation. Filed June 18th, 1919. File No. 27,171.

Office Supreme Court, U. S.
FILED

JUL 26 1919

JAMES D. MAHER,
CLERK.

IN THE
Supreme Court of the United States

HEIRS OF SAMUEL GARLAND, DECEASED,
Appellants,

vs.

THE CHOCTAW NATION,
Appellee.

No.  129

APPELLANT'S STATEMENT OF CASE, ASSIGN-
MENT OF ERRORS AND BRIEF.

HARRY PEYTON,
Attorney for Appellants.

JAMES K. JONES,
W. N. RIDWINE,
Of Counsel.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1919.

HEIRS OF SAMUEL GARLAND, DECEASED, <i>Appellants,</i>	}	No. 416
vs.		
THE CHOCTAW NATION, <i>Appellee.</i>		

APPELLANT'S STATEMENT OF CASE, ASSIGN-
MENT OF ERRORS AND BRIEF

STATEMENT OF CASE

This suit was filed in the Court of Claims on September 3, 1908, under section 5 of the act of May 29, 1908, 35 Stat. 445, which provides:

"That the Court of Claims is hereby authorized and directed to hear and adjudicate the claim against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear equitably due, said judgment, if any in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States

belonging to the Choctaw Nation, said judgment to be rendered upon the principle of *quantum meruit* for services rendered and expenses incurred. Notice of said suit shall be served on the Governor of the Choctaw Nation, and the Attoreny General of the United States shall appear and defend in said suit on behalf of said nation."

The suit was based upon a claim of the heirs of Samuel Garland against the Choctaw Nation for a balance due Garland as one of the delegates of said nation for services rendered in securing settlement with the United States of a claim for the net proceeds of the sale of certain lands ceded by the Choctaws to the United States, the lands lying east of the Mississippi River. This was known as the "net proceeds" claim, and we shall hereafter refer to it as such.

Samuel Garland, P. P. Pitchlyn, Israel Folsom and Dixon W. Lewis, by an act of the Choctow Council, on November 9, 1853, were appointed delegates to take up with the Government at Washington the settlement of the "net proceeds" and other claims existing on behalf of the Choctaw Nation against the United States. (R. p. 18.)

They negotiated the treaty of June 22, 1855, wherein the claim of the Choctaw Nation, in the net proceeds and other claims were recognized. (11 Stat. 611-614.)

As a result of this treaty, and further negotiations thereunder and of a suit instituted by them, the delegates secured to be finally paid to the Choctaw Nation the sum of \$3,078,311.23. (R. p. 19.)

On the 21st of November, 1855, Allen Wright, P. C. C. N. and N. Cochauer and George W. Harkins, Dis. Chfs. made the following contract with Samuel Garland, P. P. Pitchlyn, Israel Folsom, and Dixon W. Lewis, the delegates named in the act of 1853:

"We, the undersigned chiefs, do hereby agree that the delegation, viz.: Samuel Garland, P. P. Pitchlyn, Israel Folsom and Dixon W. Lewis, shall receive twenty per cent upon all claims arising or accruing to this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that the said delegation are to receive no fees for the lease money nor for funds which the Chickasaws are to pay for jurisdiction granted them in the treaty." (R. p. 3.)

This was approved by several acts of the Choctaw Council. (R. pp. 20, 21, 26, 34, 45.)

There was due for these services, from the Choctaw Nation to the delegates, a total of \$638,944.46. (R. p. 37.)

This amount was collected from the United States Treasury by Campbell Leflore, "succeeding delegate," and the heirs of Garland received the sum of \$43,933.30. They claimed a balance due of \$115,788.85, for which suit was instituted in the Court of Claims.

From "The history of the proceedings" in the Court of Claims the following appears (R. p. 16):

Upon the first trial of the case, with opinion by Hay, J., concurred in by all the judges, a judgment was rendered for plaintiffs against the Choctaw Nation for the sum of \$94,817.66. (See appendix to brief.)

Defendant's motion for a new trial was considered in chambers and allowed in open court, and an order passed that the case be remanded to the general docket with leave to both sides to take further testimony.

Upon a second trial of the case, the petition was dismissed, opinion by Downey, J., concurred in by all the judges.

It is but fair to state (and we assume that the Attorney General will admit the fact) that neither side suggested upon argument that more testimony could be had, and the defendants, upon the motion for a new trial, did not allege newly-discovered evidence, but on the contrary it was stated by counsel for defendants that no more testimony was to be had, and at both trials the case was heard upon the same evidence.

ASSIGNMENT OF ERRORS

The following are hereby assigned as errors committed by the Court of Claims:

I. In its conclusion of law that the petition be dismissed.

II. In holding, as a matter of law, that the payment of the amount due to Samuel Garland, or to his heirs, under the contract of 1835, and under the acts of the Choctaw Council, to Campbell Leflore and Edmund McCurtain, or either of them as "succeeding delegates," was a full discharge of the Choctaw Nation to said delegates under their said contracts and the laws of the said nation.

III. In finding upon the evidence (which evidence is sent up to this Court with the findings of fact and opinion), as a mixed question of law and fact, that there had been full satisfaction of the claim of Samuel Garland.

BRIEF AND ARGUMENT

FIRST PROPOSITION

Did the receipt by Leflore and McCurtain of the money due from the Choctaw Nation to the delegates discharge the nation of all liability?

All the evidence pertinent to this question, which consists of the acts of the Council of the Choctaw Nation,

the contract between the nation and the delegates, and the treaties between the Choctaw Nation and the United States, are before this Court. The acts and contract are sent up with the findings; the treaties are referred to by statute.

The "underlying question" was thus stated by Downey, J.:

"There seems to be an underlying question, the determination of which adverse to plaintiffs must foreclose their right of recovery, and upon which the Court bases its conclusion.

"Were Leflore and McCurtain, when they collected and distributed this money, merely the 'agents' of the Choctaw Nation, for whose misapplication of the fund, if they did misapply it, the nation was liable, or were they then the delegation, the successors of the original delegation, standing in such relation ~~on~~^{to} the nation and other members of the delegation or their beneficiaries, that payment to them, as it was made, is to be held an acquittance of the nation?" (R. p. 51.)

Determining this question, upon the contract and the laws of the nation, all of which is now before this Court, Mr. Justice Downey said:

"We are of the opinion that the payment made to Leflore and McCurtain served to discharge the nation from any further liability in this matter to the delegation or any member thereof or their representatives, and on this ground it is ordered that the case be dismissed." (R. p. 56.)

Thus it will be seen at the very outset of the case that the basic—"underlying"—question involved is that of the legal effect to be given the contract and the laws of the

Choctaw Nation, under which the rights of plaintiffs were, as we charge, impaired; in fact destroyed.

As stated, the contract and laws involved are before the Court as parts of the findings sent up by the Court of Claims. The act of the Choctaw Council, appointing the delegates, and the contract of the nation with the delegates have been set out or referred to on the first pages of the brief. Other laws of the nation, or resolutions of the council, bearing upon the question involved, and included in the findings, are as follows:

1. Act of Choctaw Council, November 9, 1853, appointing delegates, set out page 1 hereof. R. p. 17. 18

2. Resolution of council, November 4, 1854, directing delegates "to remain in Washington and to continue to press to final settlement all claims of the Choctaws against the Government." (R. p. 18.)

3. Negotiated treaty of 1855, whereby rights of the Choctaw Nation to the proceeds of the sale of lands east of the Mississippi, and other rights of the nation were recognized. (11 Stat. 611-614.)

4. Contract of November 2, 1855, with Principal Chiefs of Choctaw Nation and delegates agreeing upon twenty per cent of the judgment as the delegates' compensation. (R. p. 19.) This contract approved by acts of council. (R. pp. 20, 21, 26, 34, 35.)

5. As result of efforts of delegates, on March 9, 1859, the Senate of the United States passed resolution directing that the Choctaws be allowed the proceeds of the lands sold, etc., and on the same day, by another resolution the Senate directed the Secretary of the Interior to state the account between the Choctaw Nation and the United States. (P. 18.) See Choctaw Nation vs. United States, 119 U. S. p. 1.

6. The delegation remained in Washington, under instruction of the nation, and as a result of their efforts in the accounting, the Secretary of the Interior reported to the Senate an indebtedness of the United States to the Choctaw Nation of the sum of \$2,981,247.30. (R. p. 19.)

7. As a result of continued negotiations on the part of the delegates, on March 2, 1861, appropriation was made by Congress, of \$500,000 on account of the award. Two hundred and fifty thousand dollars was paid into the Treasury of the nation in cash, and bonds of the United States for \$250,000 were to be delivered to the nation. The bonds were never delivered.

The right of the delegates to 20 per cent of this amount was recognized by the nation, though a balance of \$23,395.39 remained unpaid until the final settlement of the case was had under a judgment hereafter referred to. This \$23,395.39 was collected by Leflore and McCurtain, as "succeeding delegates," and under the decision of the lower Court, payment of this sum to them, as well as all other money due the delegates, some \$638,944.46, by the United States Treasury, absolved the nation of all liability to the delegates of 1853 under the contract of 1855. (R. p. 19.)

The action of the Choctaw Nation and the delegates relating to the contract and the scope of the powers and duties of the delegates, as shown by this appropriation and settlement of same, evidences:

The recognition by the nation of its liability under the contract, in that the delegates were to receive 20 per cent upon such money as was received; and further, that all money recovered or secured to be paid, should be collected by the nation, paid into the treasury of the nation. And still further, and as indicative of the scope of the duty and powers of the delegation that it was no part of the duty

of the delegates to be disbursing agents regarding the fund.

8. Further recognition of the legality of the contract is shown by appropriations made by the councils towards the expenses of the delegates while in Washington, in the years 1857, 1858, 1859 and 1868. (R. pp. 22, 23, 24.)

Presumably, by reason of the intervention of the Civil War, nothing was done under the treaty of 1855, and the Senate award of 1859, until 1866.

9. Treaty of 1866, between Choctaw Nation and the United States, Art. X reaffirms all obligations arising out of treaty stipulations, etc. (14 Stat. p. 774.)

10. November 18, 1867, the council passed the following act:

* * * That the delegates composed of P. P. Pitchlyn, Israel Folsom, Samuel Garland, and Peter Folsom are hereby notified that inasmuch as they have nearly consummated the "net proceeds question," they shall proceed without delay to Washington City for the express purpose of bringing the subject matter of these resolutions to the notice of Congress, and to respectfully ask an early appropriation be made to carry into effect the amount due this nation as stated in the preambles of these resolutions.

SEC. 2. *Be it further resolved*, That in the event an appropriation shall be made by Congress, in the whole or in part payment of the net proceeds sale of the lands of the Choctaws which they ceded to the United States east of the Mississippi River, the delegates herein mentioned shall report to the national attorney of this nation the fact of such appropriation, who shall proceed to investigate the claims of the delegates as well as the amount that may be due their attorney for fees under a certain contract said to have been made with John T. Cochrane, dated February 13, 1855, and shall report the amount due the

delegates and attorneys, the principal chief of this nation, who shall convene the council, should he deem it necessary in order to provide payment due under the contract aforesaid, as well as to carry into effect the 12th article of the treaty of June 22, 1855. *It being understood, however, that no money shall be paid on said contract, or any other contract which has not been duly authorized and approved by the council;* that when contracts are adjusted and paid they shall be duly cancelled and filed away in the office of the national secretary.

SEC. 3. *Be it further resolved,* That it is hereby declared to be the intention of the Choctaw Nation that the terms of service of the delegates herein mentioned shall expire when the whole amount of the "net proceeds question" is adjusted and settled by Congress and said delegates are required to render full and just report of their proceedings and progress they are making with the claim, from time to time, to the principal chief of this nation.

SEC. 4. *Be it further resolved,* That this resolution shall take effect and be in force from and after its passage.

Approved November 18, 1867. (R. p. 26.)
(Italics ours.)

This resolution shows:

(a) That the national council recognized the obligation of the nation to pay the delegates the amount agreed upon in the contract of 1855, and

(b) That it was not the intention of the contracting parties that the money received upon the net proceeds claim should be received and disbursed by the delegates. On the other hand it was to be paid into the treasury of the nation and disbursed by the treasurer upon vouchers; in the regular, ordinary manner.

11. The validity of the delegates contract of 1855 was again recognized, and the policy of the nation as to the

receipt and disbursement of the net proceeds money was again declared in an act of the council on October 30, 1873. This act is as follows:

BILL NO. 28, AN ACT TO PRESCRIBE AND
DEFINE THE DUTIES OF THE NA-
TIONAL TREASURER ON RELATION TO
THE NET PROCEEDS CLAIM.

SEC. 1. *Be it enacted by the General Council of the Choctaw Nation, assembled, That as soon as any amount may be appropriated by Congress for the net proceeds, the national treasurer be authorized and directed to receive the same at Washington and pay not exceeding 30 per cent in fulfillment of the Choctaw contracts and 20 per cent of such appropriation for the delegates of 1853 and 1854, to enable them to discharge all liabilities and obligations under said contracts and all expenses necessarily incurred in recovering said claim, the other half to be returned for claims of individuals or for national purposes as indicated in 11 and 12 articles of the treaty of 1855, provided that all just debts due the nation, whether from the said delegation or for any sum improperly advanced under the Cochrane contract shall first be deducted and the residue coming under said contract to said delegation respectively after final settlement at Washington shall be paid to them or their representatives by said treasurer, the object of the act being to secure a fair settlement and a full payment of the 30 per cent, deducting whatever has already been paid.*

SEC. 2. *And be it further enacted, That this act shall take effect from and after its passage and that all acts and parts of acts in conflict herewith be, and the same are hereby appealed.*

Approved October 30, 1873. (R. p. 20.) (Italics ours.)

On April 26, 1881, the United States having failed to pay the amount due the Choctaw Nation under the Senate award, Congress passed an act authorizing suit by the Choctaw Nation against the United States for the determination of all claims of the nation under the treaty of 1855, and other treaties, and Peter Folsom, the sole surviving delegate of 1853, acting for the nation, contracted with John B. Luce an attorney, to bring the suit in the Court of Claims. This employment was in connection with a former employment by the delegates of 1853, of McKee and other attorneys. The compensation of the attorneys was fixed by contract at 30 per cent of the sum recovered, was approved by the National Council, and the full fee paid them. (R. pp. 29-32.)

Upon a hearing of the case, the Court of Claims awarded judgment in favor of the Choctaw Nation against the United States for the sum of \$408,120.32. From this judgment an appeal and cross appeal was taken to this Court, and upon a hearing, the judgment of the Court of Claims was reversed and judgment ordered upon the net proceeds claim in the sum of \$2,981,247.30, subject to the deduction of \$250,000 paid under the act of 1861; and for unpaid annuities, \$59,449.32; and for boundary lands \$68,102. (119 U. S. 41.)

Under the mandate, final judgment was entered by the Court of Claims on December 15, 1886.

It is important to note that from 1853 to 1881, when Peter Folsom, the surviving delegate employed Luce, as attorney to bring suit for the Choctaw Nation, that neither Leflore or McCurtain had had any connection whatever with the net proceeds claim.

From the time of the institution of the suit, until final judgment, the claim was in litigation—in the courts—and there is no evidence whatever that either of them had any

connection with the claim. As the litigation was in the hands of eminent counsel, it is inconceivable what service the delegates could have performed.

In fact, neither Leflore or McCurtain appear in connection with the net proceeds claim until about the time of final judgment, December, 1886, when Leflore is referred to in an act of the council as a "succeeding delegate." This reference relates to a "memorial" he presented to Congress requesting *payment of the judgment*. There is no record of his appointment; in fact, there is no record of the date of his appointment, but his representation of the nation in that capacity is referred to in an act of the council passed in 1888, and his only service prior to that date, as far as is disclosed by the record, was the presentation of the "memorial" referred to on a date subsequent to the rendition of final judgment. (R. p. 28.)

We can be certain as to the date of the appointment of McCurtain as "succeeding delegate," and his duties incident thereto.

The act authorizing his appointment was of date *February 25, 1888*, and the appointment was made the same day. He was "to proceed to Washington and to assist in the settlement of the net proceeds claim and carry out fully the provisions of the several acts of the council in reference thereto." (R. p. 34.)

Up to this date the rights of Garland—or his heirs—was fixed, and determined by the contract and the laws of the Choctaw Nation. The compensation of the delegates, 20 per cent of the amount of the judgment, had been repeatedly affirmed by acts of the Choctaw Council. The Choctaw Nation was liable to him for the amount due, and it was a solvent debtor. Under the laws of the nation the entire amount to be collected on account of the net proceeds claim, was to be paid into the treasury of the

Choctaw Nation, and disbursed by the treasurer in a specific manner. The fact of the appropriation was to be reported by the delegates to the national attorney, who was directed to investigate the claims of the delegates and the attorneys and report the amount found due to the principal chief of the nation, who might call the council, if necessary, in order to provide payments under the contracts. It was expressly provided in the resolution "*that no money shall be paid on said contract, or on any other contract which has not been duly authorized and approved by the council; and when the contracts are adjusted and paid they shall be duly cancelled and filed away in the office of the national secretary.*" (Act 1867, R. p. 26.)

Again in 1873 the council directed the national treasurer to receive the net proceeds claim then expected to be received, thereby expressly construing the laws of the nation and the contract of the delegates as not involving in the duties of the delegates those of disbursing agents; and the act further directed the treasurer, upon receipt of the money, and upon ascertaining the amount due the delegates, to pay the same *to them or their representatives.* (Act 1873, R. p. 20.)

The claim having gone to final judgment, and appropriation for the payment of the judgment being about to be made by Congress, in February, 1888, the acts of 1867 and 1873 were repealed by the national council, and instead of the fund being paid into the national treasury, and instead of its disbursement being made by the treasurer upon vouchers to be approved by the council, etc., it was provided that the money due the delegates, \$638,944.46 (R. p. 37), should be paid over by the United States to "the national treasurer of the Choctaw Nation, or to such *agent or other person* as shall be named in the requisition.

(Italics ours.) (Act Choctaw Council, February 22, 1888, R. p. 29.)

Immediately upon the approval of this repealing act, February 25, 1888, and *on the same day*, the council passed a series of resolutions or acts, relating to the receipt and disbursement of the fund arising from the judgment, among others an act authorizing the principal chief of the nation to make requisition upon the United States Treasury for the payment of the amount due the delegates, to Campbell Leflore and Edmund McCurtain, "delegates, successors to P. P. Pitchlyn and others." (R. p. 35.)

Again, and on the same day, this act was passed:

SENATE BILL NO. 6. AN ACT TO PROVIDE
FOR THE PAYMENT OF THE DELEGATES OF 1853 FOR THEIR SERVICES
IN THE PROSECUTION OF THE NET
PROCEEDS CLAIM, AND FOR OTHER
PURPOSES.

Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlyn and others, have recovered from the United States agreement in favor of the Choctaw Nation for \$2,858,798.62; and whereas, under the contract of the Choctaw Nation with the delegates dated November 2, 1855, it is entitled to be paid 20 per cent of said judgment: Now, therefore,

Be it enacted by the General Council of the Choctaw Nation, in assembled:

SEC. 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Leflore and Edmund McCurtain, delegates and successors to P. P. Pitchlyn and other delegates of 1853, to enable them to pay the expenses and discharge the obligation in

the prosecution of said claim, and to settle with the respective distributees of the said delegation.

SEC. 2. Be it further enacted, that the said sums shall be paid to Campbell Leflore and Edmund McCurtain, delegates of the Choctaw Nation, successors to P. P. Pitchlyn and others, *and where so paid shall be accepted as a complete payment and final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract.* (Italics ours.) (R. p. 35.)

The purpose of the repealing act and this legislation is self evident. This purpose is most obvious when the "joker" is noted in the repealing act, which not only, in general terms, repealed all former acts relating to the receipt and disbursement by the national treasurer of the net proceeds fund, but in direct terms repealed the act of 1873, "defining the duties of the national treasurer in connection with the net proceeds claim." The words, "other persons" in the act is the "joker" and the authority for naming Leflore and McCurtain as the persons to collect and disburse the money. The provision that the money should be paid into the treasury of the nation "or to such agents," etc., would have created an agency of the nation for the collection and disbursement of the fund, for whose acts the nation would have been responsible. This act, and all the other acts in connection with the collection of the net proceeds money, were passed *on the same day*, and it is reasonably certain, in the light of subsequent disclosures in the record, that there was no purpose to authorize the collection and disbursement by the treasurer or any "agent of the nation," for whose acts, in the disbursement of the fund, the nation would be liable.

On the other hand, it was a part of the scheme to take away from the treasurer of the nation all power to collect and disburse the fund, and to delegate this power to others,

without requiring bond or accounting, and by a most curious legislative legerdemain relieve the nation of all liability for the acts of the newly constituted disbursing agency, however wickedly it might dissipate the fund.

That the fund was shockingly looted, we submit, is perfectly evident from the record evidence sent up to this Court along with the findings of fact made by the Court of Claims, and so found by the Court which held, however, that there was no obligation resting upon Leflore and McCurtain to account for the money received by them, and that the mere receipt by them, of the same, under the Act of 1888, was an acquittance of the nation of all liability to the delegates of 1853 or their beneficiaries, irrespective of the manner of its disbursement, and in spite of the admitted wrongful misappropriation of the fund.

SECOND PROPOSITION

Was the repealing act of February 22, 1888, and the contemporaneous acts of the Choctaw Council relating to the collection and disbursement of the net proceeds fund violative of the contract rights of plaintiff.

Until the passage of the repealing act of February 22, 1888, as heretofore shown by the laws of the nation, it was the duty of the national treasurer to collect and disburse the moneys arising from the net proceeds fund. Disbursement was to be made only upon allowed contracts and upon vouchers and these were to be filed with the national secretary. Whatever money was found due the delegates was to be paid to them or to their representatives.

The Choctaw Nation was a solvent debtor, and answerable to plaintiffs for whatever sum was due them, and it

was legally responsible for the acts of its officials or agents. Both the right and the remedy of plaintiffs was complete.

This right, as well as the remedy, was not only impaired, but completely destroyed by the repealing act and the contemporaneous acts relating to the collection and distribution of the net proceeds fund.

By these acts, as heretofore shown, the right of the treasurer of the nation to receive the fund was taken away, and he was relieved of the duty of disbursing the fund, and to pay only such claims as were lawful and allowed; In its stead, by the terms of the repealing act and other contemporaneous acts, the money arising from the net proceeds claim was to be paid over—and was paid over—to other persons, who were relieved from any accounting whatever. No bond was required of them. By the acts in question, it was provided that the mere *receipt by them*, of the amount due the delegates of 1855, was to be taken as a complete acquittance of the nation of its liability to the delegates of 1853 or to their beneficiaries.

We submit that it was wholly without the power of the Choctaw council to change the status of the delegates of 1853, by the enlargement of their powers, or in any other manner, so as to work an impairment of the obligation of the contract of 1855, or, in any manner, so as to affect the remedy thereunder.

In the receipt by the treasurer of the Choctaw Nation of the \$250,000, paid by the United States in 1861, upon the Senate award, and its disbursement by him, we have a construction of the act of 1853 appointing to delegates, and an expression as to the scope their duties under the contract of 1855. This clearly shows that it was never contemplated by the nation or so understood by the delegates that they were to collect or disburse the net proceeds money.

In the acts of 1867 and 1873 we find express directions that the fund should be paid into the national treasury and disbursed by the treasurer.

In view of these acts, and the manner in which the appropriation of the \$250,000 was collected and disbursed, there should be no question as to the powers and duties of the delegates under their appointment. Certainly it was never contemplated, until the repealing act of 1888, was passed that one of the delegates might receive the entire fund, 20% of the judgment (which was \$638,944.46), and the \$23,395.39, balance due on the 20% of \$250,000, collected in 1861, and that such mere receipt by him could absolve the nation of all its liability to the delegates of 1853 under their contract of 1855.

We therefore submit that the repealing act and the contemporaneous acts relating to the receipt and disbursement of the money due the delegates of 1853, under their contract of 1855, inasmuch as they impair the contract between the Choctaw Nation and the plaintiff, and affect the remedy thereon, are within the inhibition of the contract clause of the constitution of the United States.

Subdivision 4, Article VIII, of the treaty of July, 1866, between the Choctaw Nation and the United States (14 Stat. 772) provided:

* * * No law shall be enacted inconsistent with the Constitution of the United States or the Laws of Congress or existing treaty stipulations with the United States. * * *

In *Mackey vs. Cox*, XVIII Howard, 103, where the Court had under consideration a statute of the Cherokee Nation, it was said:

* * * The Cherokee Nation are so far under the protection of the laws of the United States, that

they may be considered, for the purposes above named, as a State or Territory of the United States. (Syllabus.)

* * * A question has been suggested whether the Cherokee people shall be considered and treated as a foreign State or Territory. The fact that they are under the Constitution of the Union, and subject to acts of Congress regulating trade, is sufficient answer to the suggestion. They are not only within our jurisdiction, but the faith of the Nation is pledged for their protection. * * *

This Court, in the above case expressly held that the laws and acts of the Cherokee Nation were upon the same footing as those of other Territories of the Union.

The obligation of contracts is impaired by such legislation as lessens the efficiency of the remedy which the law in force at the time they were made provided for enforcing them.

Louisiana vs. New Orleans, 102 U. S. 203.

The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced—by which the parties can be obliged to perform it. Whatever legislation lessens the efficiency of these means impairs the obligation.

Hendrickson vs. Apperson, 245, U. S. 113.

A legal obligation that cannot be enforced is worthless; therefore a statute, the practical effect of which is to prevent enforcement, is void.

Jordan vs. Weimer, 45 Iowa 65.

Haynes vs. Clinkscapes, 9 S. C. 441.

Richardson vs. Cook, 37 Vt. 599.

A contract between a State and a party, whereby he is to perform certain duties for a specified period, for a stipulated sum, is within the protection of the Con-

stitution; and on his executing it he is entitled to the compensation although before the expiration of the period, the State repeals the statute pursuant to which the contract was made.

Hall vs. Wisconsin, 103 U. S., p. 5.

The Court of Claims erred in refusing to award judgment and dismissing the petition.

Upon three grounds, we submit that this Court should consider the case beyond the one naked legal question involved in the decision of the case.

First. In Clark vs. U. S. 96 U. S. Rep. 37, this Court held that where the Court of Claims made findings of fact upon certain evidence and sent up to this Court the evidence upon which the findings were made if it found that there is no legal evidence to establish the facts as found by the Lower Court, this Court would determine the facts for itself; and if the Court below erred in its finding, the judgment would be reversed.

All the evidence, pertinent to the question involved, i. e. whether there had been a proper and lawful disbursement of the fund by Leflore and McCurtain; and whether the plaintiffs had been paid all that was due their ancestor, Samuel Garland, is before this Court.

Second. The question as to whether or not the repealing act, and contemporaneous acts of the Choctaw council relating to the receipt and disbursement of the net proceeds fund, are violative of the contract rights of the plaintiff under the Constitution, is one within this Court's jurisdiction.

Upon this question we submit:

In the exercise of that jurisdiction in such cases this Court is unfettered by the authority of State adjudications. It acts independently, and is governed by its own views. * * *

Hall vs. Wisconsin 103 U. S., p. 8.
See also, Dillon vs. Howard, 4 How., 421,
477.
K. C. So. Ry. vs. Albers, 226 U. S., 573, 591,
et. seq.

Ward vs. Joslin, 186 U. S. 142, 147.
Boise Water Co. vs. Boise City, 230, U. S. 84.

In the case of Criswell vs. Knights of Pythias, 225 U. S. 261, speaking for the majority of the Court, Mr. Chief Justice White said:

* * * While it is true that upon a writ of error to a State Court we do not review findings of fact, nevertheless two propositions are so well settled as the result of finding of fact which it is contended there was no evidence whatever to support and the evidence is in the record the resulting question of law is open for decision; and (b) that where a conclusion of law as to a Federal right and findings of fact are so intermingled as to cause it to be essentially necessary for the purpose of passing upon the Federal question to analyze and dissect the facts to the extent necessary to do so the power exists as a necessary incident to a decision upon the claim of the denial of a Federal right.

Cedar Rapids Gas Co. vs. Cedar Rapids, 223
U. S. 635.
Oregon R. R. Co., etc. vs. Fairchild, 224
U. S. 528.
Southern Pacific Co. vs. Schuyler, 227
U. S. 601.
Carlson vs. Curtis, 234 U. S. 103.

Third. The payments and disbursements made by Campbell Leflore and Edmund McCurtain were without authority of law except as to the small part of the amount

that was paid to the delegates of 1853 or their beneficiaries. Such other payments and disbursements (if really made as alleged) were gratuitous donations; or if made for any services, such services were of an illegal character, and have no basis as a charge against the sum due by the nation to the delegates of 1853. Such payments and disbursements (except those made to the delegates of 1853 or their beneficiaries) were in direct violation of the contract between the Choctaw Nation and the said delegates and of the laws of the Choctaw Nation.

The evidence of every payment and disbursement made by Leflore and McCurtain out of the money admitted by the Choctaw Council to be due the delegates and their beneficiaries (\$638,944.46) is in the record and before this Court.

The Court below having held that the receipt by Leflore and McCurtain of the amount due the delegates of 1855 or their beneficiaries, operated as a full discharge of the nation of all its liability to the said delegates, and that no accounting was required of Leflore and McCurtain of their disbursements; and further, that the nation was not liable for any misapplication of the fund, its conclusions upon all other features of the case should not be given serious consideration.

Looking to the opinion as interpretative of the mind of the Court, rather than for the purpose of "eking out, controlling or modifying the scope of the findings" (Crocker vs. U. S., 240 U. S. 74) we submit after having held that the act of February, 1888, operated to repeal the acts of 1867 and 1873, and that the contemporaneous acts of February, 1888, were valid in their operation as to the disposal of the amount due the delegates of 1855 or their beneficiaries, that the Court dealt very lightly with the

further question of the purported settlement and the legal effect of the same.

On page 56 R. the Court said:

It is perhaps well to mention and possibly *comment briefly* on the other questions of the case *not decided*, since the conclusions as to the one discussed is sufficient for the purpose, and as to which there may or may not be difference of opinion. (*Italics ours.*)

Finding V, p. 37, R. states:

* * * As to one payment of \$1,500, it specifically appears that the only consideration therefor was the "sympathy" and influence of the payee, and as to many of the others listed under the heads "paid on promises made at Tushkahomma" and "paid from memorandum of P. P. Pitchlyn" it appears that the payee had either been members of the general council or were in the habit of attending the sessions; and as a matter of inference from the whole record, that many payments so listed were in redemption of promises made in return for services and influence in connection with desired legislation.

The only *legislation* of the Choctaw Nation relative to the net proceeds matter from 1881 to 1888 was that commencing February 22, 1888, and ending February 25, 1888, and the purpose of this legislation, or so much thereof as related to the amount due the delegates, is self evident, i. e., to repeal former laws and transfer the authority for collection of the money and the disbursement of the fund, from the treasurer of the nation (who was charged under the law to account for the same in a regular and particular manner), to "succeeding delegates," who were relieved of the duty of accounting to anyone. *Unquestionably (as stated by the Court) the money was paid "for*

services and influence" in connection with "desired legislation" which secured this end.

In elucidation of this particular feature of the case (we trust that we are not violating the rule laid down in *Crocker vs. U. S. ante.*) in the opinion at page 58, and referring to the charge that Leflore and McCurtain had improperly paid out the money of the delegates it is said:

Dukes is the witness referred to as testifying to the payment to him of \$1,500 for "sympathy." And it may be added that when the council referred in the appropriation act to the payment of expenses and discharge of obligations it probably had in mind obligations of this character, the existence of which were open and notorious. Assuming it to be established, as it may be fairly inferred, that many of the payments were in fact of this character, can the representatives of Samuel Garland recover from the nation on account thereof? * * *

The entire view of the case as taken by the Court of Claims is upon the theory that the repealing act and contemporaneous acts relating to the amount due the delegates, were valid, and operated to change the contract rights of the delegates under the former law. It presupposes a right of one delegate to receive the sum due all the delegates; and a further power of the one delegate to make unlawful contracts against the whole fund that would be binding upon the others. It mistakes the whole theory of the employment of the delegates of 1853 and their duties under their contract.

We again submit that it was never contemplated—certainly not in the lifetime of the original delegates—that they or any or either of them were to be disbursing agent or agents of the nation of the fund due the delegates, or that the money due them should be chargeable with such

unlawful and illegal obligations as those found by the Court to have been contracted by Leflore and McCurtain. Only upon the theory that Garland was a party to these unlawful agreements could he or his heirs be bound by them. There is no such evidence in the record, no such finding, and could not have been, as Garland died in 1870 and these contracts or obligations related to acts of the council in 1888, and certainly it was not in the interest of his heirs to be parties to the illegal practices of Leflore. All the delegates—the predecessors of Leflore and McCurtain—had been dead for a considerable period of time before these transactions occurred.

So far as the record shows—and the record shows all the legislation by the Choctaw Nation regarding the net proceeds claim that was before the Court of Claims upon a trial of the case,—there was no legislation relating to the net proceeds claim by the Choctaw council between 1873 and 1888. The only transaction relating thereto was the employment in 1881 of Luce by Folsom, the sole remaining delegate of the delegation of 1853.

As we have heretofore stated, from 1881 to the date of final judgment, the claims of the Choctaw were in the Courts. No acts of the Choctaw Council appear during this period, and for the very good reason that the subject was beyond the sphere of any activities of the council or delegates, or any person other than the attorneys representing the nation.

The first reference to services by Leflore as a "succeeding delegate," in connection with the net proceeds claim, is that of his presenting a memorial to Congress to pay the judgment, after the judgment was finally rendered in December, 1886. (R. p. 28.)

The inference is that he was appointed delegate about this time. This inference is supported by the fact that,

not until then, could services of anyone be required—if then, as it appears that the judgment was duly appropriated for at the next regular session of Congress succeeding the rendition of the final judgment, and the court has judicial knowledge that the *judgments* of the Federal Courts against the United States are usually promptly appropriated for by Congress, and the nation had provided the necessary machinery for the collection and disbursement of the fund.

That the duties of Leflore and McCurtain were not those of *delegates*, in the sense that the delegates of 1853 were appointed, is evident from two additional facts in the record. First, that the appointment of McCurtain, *to assist Leflore in the settlement of the net proceeds claim* was when the claim had gone to final judgment, and the same was on the very eve of appropriation by Congress and there was involved only the duty of a disbursing officer; second, the right of either Leflore or McCurtain, or both, or of any “delegate,” to receive the money upon the net proceeds claim, did not exist and was never contemplated until the act of 1873 was repealed by the act of February, 1888, and the contemporaneous acts were passed. Then as stated, the only *service* remaining to be performed was that of disbursing agents, a duty that never belonged to, or was ever required of the delegates of 1853.

That the duty of collecting this money under the laws of the nation rested alone with the treasurer of the nation, and that, up to 1888, it was never intended to be vested in the *delegates*, under their appointment as such, is further shown by this repealing act. If the delegates, as successors of those of 1853, had the power under the authority of their appointment as contained in the act of 1853, to collect and disburse the fund, *why the necessity to repeal the act*

of 1873, which as shown, lodged this duty solely with the treasurer of the nation?

We find no express authority in the repealing act for the appointment of *the delegates*, as such, to collect and disburse the net proceeds fund, much less to receive the fund, and when so received, that such receipt of the fund by them should absolve the nation of its liability to the delegates of 1853 or their beneficiaries.

The act repealing the then existing law (which had provided that the money should be paid into the treasury of the nation) provided

* * * the same to be paid over from time to time, and in such sums and at such places as shall be required directly to the national treasurer of the Choctaw Nation, or to such agent or other person as shall be named in the requisition, etc. R. p. 29.

The camouflage, under which Leflore and McCurtain were appointed and named "succeeding delegates" and collecting and disbursing agents, is found in the words "or other person."

That it was the purpose of the council to name Leflore and McCurtain "succeeding delegates" with powers formerly to be exercised only by the national treasurer, is self evident, although the repealing act provided that the requisition should be made to the *treasurer of the nation, or some agent, or other person*. They were so named as "succeeding delegates" *on the same day the repealing act was passed*, under the authority of the words "or other person" contained in the act. Only for the use of these words "or other person" in the act, the proceeds of the judgment would have been paid of the treasurer of the nation *or to an agent*, of the nation, who would have been a disbursing officer for the nation, and the rights and remedies of plain-

tiffs against the nation for any misapplication of the funds would have been preserved.

In further illumination of what the Court meant in Finding V in finding that many of the payments made by Leflore and McCurtain were made upon promises, in their very nature illegal, on p. 57 R., bottom page, it is stated:

* * * There is some evidence of indebtedness on the part of members of the delegation for borrowed money, but as to many payments the contention of counsel for plaintiffs that they were in the nature of bribes to members of the council and payments to lobbyists is probably correct. That *theory at least is better sustained than any other.* * * * (Italics ours.)

In the face of these express declarations of the Court that there were gross misapplications of the fund belonging to plaintiffs, the Court below refused to award judgment in their favor. This action proceeded upon the theory that Leflore and McCurtain were not the agents of the nation, but acting in their capacity as "succeeding delegates," and under the repealing act and the contemporaneous acts, were entitled to receive the entire amount due the delegates of 1853 or their beneficiaries, and that all their acts, respecting the fund, however unlawful these acts may have been in the misapplication of the fund, was under authority of law and cannot now be charged to the Choctaw Nation.

In other words, the Court below refused to disturb an alleged settlement which is shown and found by the Court to be illegal in part, and as a whole is shown so tainted with fraud that it should receive no consideration whatever in a court of justice.

The alleged settlement (R. pp. 38-42) was wholly inad-

missible as evidence, and tainted as it was by admitted misconduct of Leflore, as was found by the Court, it should not have been given any probative value in the determination of the case. (Crocker vs. U. S., 240 U. S. 82.)

It was neither an original, or shown to be a copy of an original of any record filed with the proper custodian of such documents.

It is expressly found by the Court that it was not shown that the report was ever filed with or acted upon by the council, which is in express contravention of the acts of 1867 and 1873.

It is discredited upon its face, as it purports to be the identical document distributed among members of the council and others *at the fall session of the council in 1888*, when in fact, upon its face it shows that it was not printed *until July 3, 1889*. (R. p. 38.)

Assuming that the repealing act of February, 1888, and the contemporaneous acts relating to the receipt and disbursement of the net proceeds fund, are void as against the rights and remedies of plaintiffs under their contract and former statutes, the alleged report was not made as required by law (the acts of 1867 and 1873), and aside from this and the other objections to its use for the reasons above stated, it is not admissible upon the theory that it is an ancient document.

Recognizing the wrong that had been done the Garland heirs in the failure of Leflore and McCurtain to fully pay them the amount due their ancestor, Samuel Garland, the council of the Choctaw Nation, on November 6, 1897, passed an act appropriating the sum of \$115,786.85 (the amount for which this suit is brought) as "the balance due the heirs of Samuel Garland, deceased, delegate of 1853." This bill and the action thereon is in Finding V, pp. 45, R. The conclusion of the finding states that the record did not

show what action was taken upon the bill by the principal chief, but it appears from the stipulation that it was vetoed. The petition alleges that the veto was upon the ground that the payment of the amount appropriated would seriously deplete the public school fund, and on that account the bill was vetoed.

This action of the Choctaw Council is at least an admission by the council of the indebtedness to the Garland heirs and strongly persuasive of the merits of the case and the amounts due thereon, and offers a just and reasonable basis for the judgment that should have been—and which should be rendered.

Assuming that Leflore and McCurtain, as “succeeding delegates” were standing in such relation to the nation and other members of the delegation or their beneficiaries, that payment to them is to be held an acquittance of the nation (R. p. 51) and dealing with the services performed by Leflore and McCurtain, on p. 53 R., the Court says:

What service, if any, was required of these delegates (meaning the “succeeding delegates”) at Washington in procuring the appropriation does not appear, but when McCurtain was appointed the appropriation had not yet been made, although the judgment was two years old, etc.

This carries the inference that there had been a failure of Congress to duly appropriate the money in payment of the judgment.

There is absolutely no warrant for this inference. This Court will take judicial notice of the sessions of Congress; when it convenes and when it adjourns. This final judgment was rendered on December 15, 1886. The transcript of the judgment, under the rules of the Court of Claims, could not be issued until three months after the date of the

final judgment, hence it could not have been filed with the Treasury Department until March 15, 1887. *This was the short session of Congress which adjourned March 4, 1887.* Therefore the judgment could not have been reported by the Treasury Department to Congress for appropriation until the December, 1887, session. It was so reported, was referred to the appropriate committee and finally appropriated for on the regular Indian bill of that session, carrying appropriations in Indian matters.

At the time of McCurtain's appointment as succeeding delegate, February 22, 1888, the judgment had been reported to Congress by the Secretary of the Treasury, had been referred to the appropriation committee and unquestionably, along with other Indian matters, was in process of appropriation in the regular way.

When we find such loose inferences as the above in the record we can excuse them only upon the theory that the court, having adjudicated adversely to plaintiffs upon the "underlying" legal question involved, felt itself absolved from giving serious consideration to other questions presented.

It should be needless to argue as to the reason for the change in the law of the Choctaw Nation relating to the collection and distribution of the net proceeds money, especially the \$638,944.38 owing to the delegates of 1853.

With the admitted facts that at the 1888 session of the council when the "desired legislation" was secured, and the "influence in connection with desired legislation" was being purchased by Leflore and McCurtain with promises to be redeemed by payments out of the fund due the delegates of 1853 (\$1,500 having been paid to Dukes, ex-chief of the nation, for his "sympathy" and so found by the Court), it is not difficult to determine the purpose of the repealing legislation, or the scope of the duties of the "suc-

ceeding delegates," or the nature of the "services" they were expected to perform, especially when the record shows (and it has been so found by the Court), that these "promises," made to lobbyists for services and members of the council for votes and influence, were actually redeemed by payments made by Leflore and McCurtain out of the funds appropriated to pay the claims of the delegates of 1853 and their beneficiaries, even to the payment of \$1,500 to ex-Chief Dukes for so remote a service as his "sympathy." (Finding V, p. 37, R.)

In addition to the gross misapplication of the money collected by Leflore and McCurtain, by payment of bribes to members of the council and by payments to lobbyists around the council, above referred to, the record shows a direct misapplication of the money by a payment to McKee, one of the attorneys of the sum of \$145,399.15. (R. p. 40.) Not only was there no warrant for this payment, but the act of the Choctaw Council which authorized the payment to the attorneys of 30 per cent of the judgment, expressly provided, this was to be in full for their services. This payment to McKee was a sum in addition to the amount appropriated by the council, and which, as stated, was to be in full of the fee due the attorneys under the contract. (Finding IV, p. 30 R.)

If the Court below erred in its legal conclusions respecting the status of the succeeding delegates, and in its holding that receipt by them of the amount admittedly due the delegates of 1853, acquitted the Choctaw Nation of all liability, even though there was a misapplication of the fund, then, we submit that the judgment should be reversed, and if there is sufficient evidence before this Court to warrant action independent of that of the lower Court, a judgment should be awarded here for the sum due plaintiffs, and the case remanded for the entry of the judgment, as was done in the

case of the Choctaw Nation vs. The United States (119 U. S. p. 41).

If there is not sufficient evidence before this Court upon which it can independently act, and award judgment, then the judgment of the lower Court should be reversed, with such ruling upon the questions involved as this Court shall, in its wisdom and judgment, make.

Should this Court look to the evidence for a basis for judgment we would respectfully submit:

The amount due the delegates of 1853, 20 per cent of the final recovery, \$638,944.36, is admitted by the nation. (R. p. 34.)

Under the act of 1873, upon the accounts of the delegates being audited, the amount due them was to be "paid to them or their representative by the treasurer." (R. p. 20.)

The only defense offered upon the merits is the claim of Leflore and McCurtain that they made certain expenditures or made certain payments, and that the balance due, after these deductions had been made, was paid to plaintiffs. Many of these payments are found by the Court to have been absolutely illegal, and this alleged report is so tainted—saturated—with the misconduct of Leflore and McCurtain that it is of no probative value as evidence against the claim of plaintiffs in the determination of the case. (Finding V, bottom p. 37.) (Opinion, bottom p. 59 and p. 60.)

By act of the Choctaw Council it was admitted that the balance due from the Choctaw Nation to the heirs of Samuel Garland was \$115,786.65. (R. pp. 45, 46.)

While this act was not approved by the principal chief, upon the entire record before this Court, and under act of Congress directing the Court to find what was *equitably* due the Garland heirs, we submit that it is of value, being in the nature of an account stated between the Choctaw

Nation and the Garland heirs; an admission of the national council that the sum stated is the balance due them.

Quantum Meruit

At the end of Finding V, p. 47, R., it is stated:

There is no showing in the record as to the specific services rendered by the delegation or any member thereof in procuring the adjustment of this matter independent of the services of the attorneys employed by them and paid by the nation, and there is no testimony as to the value of the services rendered.

It is inconceivable how the Court below could have made this finding with the record before them, *and which record is now before this Court*. This record shows:

That the delegates were appointed in 1853. R. p. 17.

They were directed to come to Washington in 1854 in connection with the net proceeds claim. R. p. 18.

They negotiated the treaty of 1855, which was the basis of the final settlement of the net proceeds claim. (11 Stat. 611-614.)

Contracted with the nation for 20 per cent of recovery. R. p. 19.

They remained in Washington from 1855 to 1861 and secured the award from the Senate, \$2,981,247.30, *the exact amount for which judgment was finally rendered and ordered in this Court* (119 U. S. p. 1).

They secured the appropriation of \$500,000 in 1861, \$250,000 of which was paid into the treasury of the Choctaw Nation.

They were directed by the council to proceed to Washington in connection with the net proceeds claim in 1867. R. p. 26.

The sole surviving delegate, acting for the nation, employed counsel to bring suit against the United States on behalf of the nation, under authority given by Congress.

Thereafter and until final judgment in 1886, the claim was in litigation, the entire contest involving matters of record evidence.

Their authority and services, up to 1861, were recognized by the nation through acts appropriating money for their expenses while in Washington. R. pp. 22, 23, 24.

The services of the delegates of 1853 and their right to compensation of 20 per cent upon the judgment of \$2,858,798.62 and to be paid \$23,395.39, a balance remaining due and unpaid on account of the receipt of the \$250,000 in 1861, by the nation, was recognized, and admitted by the Choctaw Nation in act of the council February 25, 1888. R. pp. 34-35.

From the above record evidence now before this Court the fact is clearly established that *all substantial* services rendered in and about the settlement of the claim of the Choctaw Nation against the United States relating to the net proceeds claim, from the creation of the delegation of 1853, to the institution of the suit in 1881, were rendered by the delegation of 1853, and that no services were rendered—none could have been rendered as the entire matter was in the courts—by any succeeding delegates, under the acts of 1853, 1867 and 1873. The only services thereafter required and shown were those of purely receiving and disbursing agents. This duty was cast upon the treasurer of the nation under the law, and continued until the law was repealed by the act of February 22, 1888. That no services of "delegates" were necessary or required subsequent to the employment in 1881 of Luce by Peter Folsom, the sole survivor of the delegation of 1853, is self evident from the fact *that none were appointed until about*

1886,—most probably subsequent to that date,—the date of the rendition of the final judgment. Thereafter only the services of a disbursing agent (a duty cast upon the national treasurer under the acts of 1867 and 1873) was required, a service wholly without the scope of the employment of the delegates under their contract and the act of 1853.

As stated the sole service required was that of a disbursing officer, with the necessary auditing service incident to the distribution of the fund, all of which was fully provided for by the law, until destroyed by the repealing act of 1873.⁸⁶ And it affirmatively appears in the record, that the only service pretended to have been rendered by a "delegate," subsequent to the employment of Luce by Peter Folsom, the sole survivor of the delegates of 1853, was the presentation of a "memorial" to Congress by Leflore subsequent to the rendition of the final judgment. For this service he paid to himself almost as much as he graciously awarded to the Garland heirs for the many years of valuable services rendered by their ancestors! R. pp. 39-40.

If the only light upon this feature of the case—whether or not there was any evidence showing the services rendered by the delegates of 1853—was that afforded by the finding of fact made by the Court, as to that ultimate fact, as was stated by this Court in *Clark vs. The United States*, *supra*, this Court would not go behind the finding. But, in the case of bar (as was done in the *Clark* case, *supra*), the Court below has "mingled with, and made a part of its findings of fact, and sent up here as a part of the record" all the proceedings of the Choctaw Nation, which were before the Court below, and which is *the evidence upon which the finding was made*.

In the *Clark* case, *supra*, p. 40, this Court said:

* * * But we are of the opinion that when that Court has presented as part of their findings what they show to be all the testimony on which they base one of the essential, ultimate facts, which they have also found, and on which the judgment rests, we must, if that testimony is competent of that fact, reverse the judgment for that reason. For here is, in the very findings of the Courts, made to support the judgment, the evidence that, in law that judgment is wrong. And this not on the weight or balance of testimony, nor any partial view of whether a particular piece of testimony is admissible, but whether, upon the whole of the testimony as presented by the Court itself, there is any evidence to support the verdict; that is, its finding of the ultimate fact in question.

Because we are not able to find any phrases for ourselves which seem to so well express what we would like to say upon this particular phase of the case, we adopt the following language of Hay, J., in the first opinion, printed as an appendix hereto:

* * * This Court is authorized by the act of May 9, 1908, to adjudicate this claim "and to render judgment thereon in such amounts, if any, as may appear to be equitably due * * * said judgment to be rendered on the principle of *quantum meruit* for services rendered and expenses incurred."

It appears from the evidence that Samuel Garland did render services in bringing about the treaty of 1855, under which treaty the Choctaw Nation recovered the sum of \$3,078,371.23; that he continued to render service after the ratification of the treaty and was instrumental in obtaining the appropriation of \$250,000, and continued to perform services as a delegate up to the time of his death in 1870.

The evidence submitted by claimants as to the value of the services rendered by Samuel Garland is the act

of the legislative council of the Choctaw Nation, which in the first place agreed to pay him and his associates 20 per cent of the amount of the judgment which they might recover as a result of work already done by them which they might hereafter do, and in the second place, after the delegates were dead, actually appropriated the money which they agreed to pay them.

It thus appears that the defendants themselves have acknowledged by their own acts that the plaintiffs are entitled to receive the amount of money which they are suing, and that their services were worth that much.

* * * Much has been said in this case about the fees which were paid to lawyers employed at different times. But there is nothing in the case to show that any part of the 20 per cent fund provided for the delegation of 1853 was to be charged with any part of these attorneys' fees. On the contrary, it appears that there was a separate contract made with respect to attorneys' fees, under which the attorneys were to receive 30 per cent of the recovery. On February 28, 1888, the same day the act was passed appropriating 20 per cent of the fund for the payment of the delegates of 1853, another act was passed appropriating 30 per cent of the fund for the payment of the attorneys. Thus the Choctaw Nation by its own action acknowledged both obligations and recognized them as distinct and separate from each other.

All the evidence here referred to in the first trial of the case was before the Court upon the second trial. There has been no diminution of the record, and this evidence is now before this Court, and we submit that the Court may look to it to determine if there is, as was first stated, evidence of services and value of the same; or if, as last stated, there is *no evidence* relating to either the services rendered by the delegates of 1853 in procuring the adjust-

ment of the matter of the net proceeds claim, or as to the value of these services. The Court will find in the present record all the evidence referred to in the first opinion, and before the Court upon the last trial.

JUDGMENT REQUESTED FOR \$115,786.65 AND INTEREST

In the adjudication of the case of the Choctaw Nation against the United States, 119 U. S., p. 1, the Court was directed to not bind the United States with the award of 1861. In effect, the Senate Resolution under which the award of 1861 was made, was repealed. This Court, however, followed the award and rendered judgment for the exact amount of the award.

Under the act of Congress, directing the Court of Claims in this case to render judgment in such amount, if any, as may appear to be *equitably* due, we submit that the act of the Choctaw Council of November 6, 1897—a date subsequent to alleged settlement of Leflore—admitting that there was then a balance due the heirs of Samuel Garland of \$115,786.65 and appropriating that sum (although the act did not become a law), furnishes an equitable basis for the judgment in this case.

As the amount due Garland was for services rendered, and as such services were recognized, as well as the value of the same, in the appropriation act of 1888; and further inasmuch as there was received by Leflore and McCurtain, agents of the Choctaw Nation, the sum of \$159,786.65 (the amount due to plaintiffs as the heirs of Samuel Garland), upon which there has been paid only the sum of \$43,943.30, leaving a balance due, as alleged in the petition, of \$115,786.65, judgment is requested for that sum, with 5 per cent

interest from August 12, 1889, and it is prayed to be so ordered by this Court; and that the judgment of the Court of Claims be reversed and the case remanded for judgment in accordance with this request, or in such amount or in such manner as this Court may direct.

HARRY PEYTON,
Attorney for Appellants.

JAMES K. JONES,
W. N. REDWINE,
Of counsel.

APPENDIX

COURT OF CLAIMS OF THE UNITED STATES

No. 30252

(Decided March 12, 1917)

ELLEN GARLAND, THOMAS A. GARLAND, LEONIDAS M. GARLAND, MARGRITTE GARLAND, AND ELLEN GARLAND; BONNIE MAY COLE, ROGERS L. COLE, PRESLEY B. COLE, JR., EDWARD GARLAND THOMAS, PLEASANT McBRIDE, GOODWIN B. STEALEY, LAURENZO P. STEALEY, CATHLEEN STEALEY, JOHN M. ROGERS, AND GEORGIA McCAFFREE, HEIRS OF SAMUEL GARLAND, DECEASED, vs. THE CHOCTAW NATION.

This case having been heard by the Court of Claims the Court, upon the evidence, makes the following

FINDINGS OF FACT

I

On the 9th day of November, 1853, the Legislative Assembly of the Choctaw Nation, by a resolution, created a delegation composed of Samuel Garland and three other persons authorizing and empowering it to settle all of the unsettled business between the Choctaw Nation and the United States.

In pursuance of this resolution Samuel Garland and the other members of the delegation went to the city of Washington and began negotiations for the settlement of all claims which the nation had against the United States. As a result of these negotiations the treaty of June 22, 1855, was entered into between the Choctaw Nation and the United States. By virtue of this treaty the claims of the Choctaw Nation were submitted to the Senate of the United States for adjudication. On March 9, 1859, the Senate of the United States passed a resolution adjudicating these claims, and as a result of the action of the Senate the Secretary of the Interior was called upon for an account to be stated between the Choctaw Nation and the United States, which account showed that the United States was indebted to the Choctaw Nation in the sum of \$2,981,247.30.

On March 2, 1861, Congress passed an act appropriating \$250,000 in part payment of the sum ascertained to be due said nation.

On March 3, 1881, an act was passed by Congress conferring upon this Court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation and render a judgment. This Court gave a judgment in favor of the Choctaw Nation for the sum of \$408,120.32. From this judgment an appeal was taken to the Supreme Court of the United States, and at the October term, 1886, of that Court a decision was rendered, the result of which was that this Court entered a judgment for the Choctaw Nation in the sum of \$2,858,798.62. On June 29, 1888, Congress passed an act appropriating the aforesaid sum, with interest at the rate of 5 per cent per annum from the 6th day of December, 1886, to the 29th day of June, 1888, making a total sum of \$3,078,311.23.

II

After Samuel Garland and his associates had negotiated the treaty of June 22, 1855, the principal chief and two district chiefs of the Choctaw Nation on the 21st day of November, 1855, entered into a contract with Samuel Garland and his associates by which they agreed on the part of the Choctaw Nation to pay Samuel Garland and his associates "twenty per centum upon all claims arising and accruing to this nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services to be rendered hereafter at Washington." This contract was approved as required by the third section of the schedule of the Choctaw constitution on the 18th day of October, 1868. On the 25th day of February, 1888, the Choctaw Nation passed an act whereby it in terms appropriated 20 per cent of the judgment which it had obtained against the United States for the payment of Samuel Garland and his associates the amount of money due them under the contract of November 21, 1855. The preamble to this act reads as follows:

"Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlyn and others, have recovered from the United States a judgment in favor of the Choctaw Nation for \$2,858,798.62, and whereas under the contract of the Choctaw Nation with said delegates dated November 2, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now, therefore, be it enacted."

III

By four resolutions passed, respectively, in 1854, 1857, 1858 and 1867, the Choctaw Nation recognized that these delegates were in their employ and were performing services for the Choctaw Nation.

IV

On February 25, 1888, an act was passed by the legislative assembly of the Choctaw Nation deputing Campbell Leflore and Edmund McCurtain to collect from the United States the 20 per cent due Samuel Garland and his associates. Twenty per cent of said judgment was \$638,-944.36. This sum was collected from the United States by Campbell Leflore. One-fourth of this sum was \$159,-729.85. Campbell Leflore, on July 3, 1889, paid to the heirs of Samuel Garland the sum of \$60,000. Samuel Garland died in 1870.

The delegation of 1853 had incurred obligations to the amount of \$19,648.67. One-fourth of this amount, \$4,912.19, must be deducted from the share of Samuel Garland. The total amount received on the share of Samuel Garland is \$64,912.19, which taken from \$159,-729.85, leaves \$94,817.66.

V

About the year 1870 Samuel Garland departed this life, leaving a will bequeathing to his wife, Mary P. Garland, his share of the amount of money due him from the Choctaw Nation by reason of his services as a member of the delegation of 1853. In the year 1887 Mary P. Garland departed this life, leaving a will by which she bequeathed to her daughter, Mary Eliza Rogers, one-third of the fund and to the children of Mary Eliza Rogers one-third, and the remaining one-third of the claim against the Choctaw Nation to David C. Garland, her grandson. The heirs of Samuel Garland are Ellen Garland, Thomas A. Garland, Leonidas M. Garland, Margritte Garland and Ellen Gar-

land; Bonnie May Cole, Rogers L. Cole, Presley B. Cole, Jr.; Edward Garland Thomas, Pleasant McBride, Goodwin B. Stealey, Lorenzo P. Stealey, Cathleen Stealey, John M. Rogers and Georgia McCaffree.

CONCLUSION OF LAW

Upon the foregoing findings of fact the Court decides as a conclusion of law that the claimants named in Finding V are entitled as heirs of Samuel Garland to recover the amount shown in Finding IV. It is therefore ordered and adjudged by the Court that the claimants recover of and from the Choctaw Nation the sum of ninety-four thousand eight hundred and seventeen dollars and sixty-six cents (\$94,817.66).

HAY, *Judge*, delivered the opinion of the Court:

The heirs of Samuel Garland are suing the Choctaw Nation for a balance alleged to be due them by reason of services performed for the Choctaw Nation by Samuel Garland.

The history of this case is that on the 9th day of November, 1853, the legislative assembly of the Choctaw Nation created a delegation composed of Samuel Garland and three other persons and authorized and empowered it to settle all of the unsettled business between the Choctaw Nation and the United States.

Samuel Garland and the other members of the delegation, in pursuance of this action of the Choctaw Nation, went to the city of Washington and began negotiations for the settlement of all claims which the nation had against the United States. As a result of those negotiations the treaty of June 22, 1855, was entered into between the Choctaw Nation and the United States. This treaty was ratified by the Senate February 21, 1856. By

virtue of this treaty the claims of the Choctaw Nation were submitted to the Senate of the United States for adjudication. The Senate of the United States, on March 9, 1859, passed a resolution adjudicating these claims, and as a result of the action of the Senate the Secretary of the Interior caused an account to be stated between the Choctaw Nation and the United States, which account showed that the United States was indebted to the Choctaw Nation in the sum of \$2,981,247.30.

It further appears that on March 2, 1861, Congress passed an act appropriating \$250,000 in part payment of the sum due said nation, and that sum was duly paid to the Choctaw Nation.

Nothing further was done by Congress in this matter until March 3, 1881, when an act was passed by Congress conferring upon this Court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation and render a judgment. The Court of Claims rendered a judgment in favor of the Choctaw Nation for the sum of \$408,120.32. From this judgment an appeal was taken to the Supreme Court of the United States, and at the October term, 1886, of that Court a decision was rendered, the result of which was that this Court entered a judgment for the Choctaw Nation in the sum of \$2,858,798.62. On June 29, 1888, Congress passed an act appropriating the aforesaid sum with interest at the rate of 5 per cent per annum from the 6th day of December, 1886, to the 29th day of June, 1888, making a total sum of \$3,078,371.23.

After Samuel Garland and his associates had negotiated the treaty of 1855, to wit, on the 21st day of November, 1855, the principal chief and two district chiefs of the Choctaw Nation entered into a contract with Samuel Garland and his associates by which they agreed on behalf of the Choctaw Nation to pay Samuel Garland and his asso-

ciates "twenty per centum upon all claims arising and accruing to this nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services to be rendered hereafter at Washington." This contract was approved, as required by the third section of the schedule of the constitution, on the 18th day of October, 1868. On the 25th day of February, 1888, the Choctaw Nation passed an act whereby it in terms appropriated 20 per cent of the judgment which it had obtained against the United States for the payment to Samuel Garland and others the amount of money due them under the contract of November 21, 1855, and in the preamble to this act the Choctaw Nation solemnly admitted their indebtedness to Samuel Garland and his associates and declared that they were entitled to be paid 20 per cent of the judgment under their contract of November 2, 1855, thus ratifying said contract.

The aforesaid preamble reads as follows:

"Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlyn, and others, have recovered from the United States agreement in favor of the Choctaw Nation for \$2,858,798.62; and whereas under the contract of the Choctaw Nation with said delegates dated November 2, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now, therefore."

It will be noticed that in the act of February 25, 1888, the date of the contract is given as November 2, 1855, when the contract itself was dated November 21, 1855. This is clearly a clerical error, and there can be no doubt that the contract of November 21, 1855, was referred to in the act of February 25, 1888.

On the 10th day of November, 1854, a resolution was passed in the Choctaw Council which instructed Garland and his associates to remain in Washington and press the

claims of the Choctaws. On November 4, 1857, after the treaty of June, 1855, the general council of the Choctaw Nation passed another resolution instructing Garland and his associates to proceed to Washington to urge a speedy conclusion of the unsettled business arising under the treaty of June, 1855. This was also after the contract of November 21, 1855.

On the 27th day of October, 1858, another resolution was passed by said council conferring power on Garland and his associates with respect to all matters of the eastern boundary line of the Choctaw Nation.

On November 18, 1867, the said council passed another resolution directing Garland and his associates to proceed without delay to Washington City for the express purpose of bringing the net proceed question to the notice of Congress and to ask an early appropriation to carry into effect the treaty of June 22, 1855. Thus on four different occasions the Choctaw Nation recognized these delegates to be in their employ and to be performing services for the nation. And then, as is shown above, the contract of November 21, 1855, agreeing to pay them for their services, was approved on the 18th day of October, 1868, as required by the constitution.

It thus appears that the Choctaw Nation itself held itself bound to pay to Samuel Garland and his associates 20 per cent on the amount which the United States paid to the Choctaw Nation, and no question was ever raised as to the right of these delegates to their compensation as provided for in the contract of November 21, 1855, until the money was collected by an agent of the Choctaw Nation.

On February 25, 1888, another act was passed by the legislative assembly of the Choctaw Nation deputing Campbell Leflore and Edmund McCurtain to collect from the

United States the 20 per cent due Samuel Garland and his associates; and by another act, passed on the same day, it was provided as follows: "Section 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Leflore and Edmund McCurtain, delegates and successors to P. P. Pitchlyn and other delegates of 1853 to enable them to pay the expenses and discharge the obligation in the prosecution of said claim and to settle with the respective distributees of said delegation." Twenty per cent of said judgment was \$638,944.36. This sum was collected by LeFlore and was paid out by him. It is alleged that he had not properly paid out said sum of money, and that the claimants have not received their share of said money, which they allege was \$159,729.85.

There is in the record a paper which purports to be a memorandum or settlement made by Campbell Leflore, showing how he disbursed the 20 per cent fund. It is not alleged that this paper is the original account, or that any account was rendered by Leflore to any one of his transactions as delegate for the disbursement of this fund.

It does not seem that this paper, in its character *ex parte*, should be taken as conclusive, but can only be given such weight as other and more direct evidence in the case might be corroborative of it.

It appears from the evidence in this case that Campbell Leflore paid to the heirs of Samuel Garland at Fort Smith, Ark., on July 3, 1889, the sum of \$60,000.

This Court is authorized by the act of May 29, 1908, to adjudicate this claim "and to render judgment thereon in such amounts, if any, as may appear to be equitably due * * * said judgment to be rendered on the principle of *quantum meruit* for services rendered and expenses incurred."

It appears from the evidence that Samuel Garland did render service in bringing about the treaty of 1855, under which treaty the Choctaw Nation recovered the sum of \$3,078,371.23; that he continued to render service after the ratification of the treaty and was instrumental in obtaining an appropriation of \$250,000, and continued to perform services as a delegate up to the time of his death in 1870.

The evidence submitted by the claimants as to the value of the services rendered by Samuel Garland is the act of the legislative council of the Choctaw Nation, which in the first place agreed to pay him and his associates 20 per cent of the amount of the judgment which they might recover as the result of work already done by them and which they might thereafter do, and in the second place, after the delegates were dead, actually appropriated the money which they had agreed to pay them. It thus appears that the defendants themselves have acknowledged by their own acts that the plaintiffs are entitled to receive the amount of money for which they are suing, and that their services are worth that much.

The only question which seems to be in doubt is, did Campbell Leflore, out of this 20 per cent fund, pay out any money which these delegates had promised to pay to third persons, and for which they were legally bound as a delegation to pay, and which should be deducted from their share of the 20 per cent fund. There is no evidence of this, but it is suggested in the *ex parte* memorandum above referred to. It seems that the following items were obligations for which the delegation was bound:

Amount paid delegates of 1866.....	\$11,889.84
Amount paid eastern boundary delegates	7,758.83
	<hr/>
	\$19,648.67

One-fourth of this amount is \$4,912.19, and it should be deducted from any balance which may be found due to the heirs of Samuel Garland.

Much has been said in this case about the fees which were paid to the lawyers employed at different times. But there is nothing in the case to show that any part of the 20 per cent fund provided for the delegation of 1853 was to be charged with any part of these attorneys' fees. On the contrary, it appears that there was a separate contract made with respect to attorneys' fees, under which the attorneys were to receive 30 per cent of the recovery. And on February 25, 1888, the same day on which the act was passed appropriating 20 per cent of the fund for the payment of the delegation of 1853, another act was passed appropriating 30 per cent of the fund for the payment of the attorneys. Thus the Choctaw Nation by its own action acknowledged both obligations, and recognized them as distinct and separate from each other.

The Court is therefore of opinion that the plaintiffs are entitled to recover from the defendants the sum of \$159,729.85, less \$64,912.19. The judgment will be for \$94,817.66.

Downey, *Judge*; Barney, *Judge*; Booth, *Judge*, and Campbell, *Chief Justice*, concur.

ADDENDA

Since printing the brief for appellants we have discovered that the "underlying question" (as stated by Mr. Justice Downey, p. 51 R.), i. e. the power of the Choctaw Council, by legislative enactment, to provide a different method of receiving and distributing public monies than through the ordinary channel of the Treasury Department of the Nation, is subject of constitutional limitations under the constitution of the Choctaw Nation.

This question, i. e., the manner of receipt and disbursement of the net proceeds fund, and particularly that part of the fund that was to be paid to the attorneys and delegates of 1853, was subject of an opinion of the Attorney General of the Nation, who held, in effect, that the only manner in which the fund could be received and disbursed was by payment of the fund into the Treasurer of the Nation, and disbursed by him upon appropriation duly and regularly made by the National Council.

This opinion was rendered in the construction of the act of 1867, p. 26 R. which along with the act of 1873, p. 20 R. (these acts directed the net proceeds fund to be received by the National Treasurer and that its disbursement should be made as directed by the Constitution of the Nation) was repealed by the act of February 22, 1888.

We must bear in mind that this repealing act directed that the net proceeds fund—that part thereof that was due the delegates—\$638,944.46, might be paid over to Leflore and McCurtain as "succeeding delegates," and that *they* instead of the *National Treasurer* should make all settlements and disbursements of the fund, being relieved, as the Court of Claims held, of all duty of accounting, or of having their acts approved by any authority whatever. They were even relieved of giving bond for the faithful performance of

these duties. The repealing act, which was upheld by the Court of Claims, *provided that the mere receipt of the fund by the "succeeding delegates" operated to discharge the Choctaw Nation of all liability to the delegates of 1853 or their heirs or representatives.* The court below expressly found that a large part of the fund had been paid to delegates in the council of 1888, and lobbyists about that council, for votes, influence and services in connection with this repealing legislation, and other contemporaneous legislation, whereby the receipt and distribution of the amount due the delegates of 1853, was taken from the National Treasury, and it was made possible—or attempted to be made possible—that the delegates of 1853, or their heirs or representatives, might be defrauded out of *any* money due them for their services.

Under the decision of the Court of Claims, had Leflore and McCurtain retained every cent of the \$638,944.46, admitted by act of the council to be due the delegates, R. p. 35, they, their heirs and representatives were absolutely without recourse upon the Nation.

To our contention, p. 16 brief, that the repealing act of February 22, 1888, and other contemporaneous acts relating to the receipt and disbursement of the money due the delegates of 1853, were violative of the contract rights of appellants under the contract clause of the Constitution of the United States, we now add that such legislation was also violative of the contract rights of appellants under the Constitution of the Choctaw Nation, in that it took away from the appellants the protection of having the money due them paid into the treasury of the Nation—which was a solvent debtor—and provided a different method of its receipt and distribution, whereby the contract rights and remedies of appellants were seriously impaired, if not in fact destroyed.

Sec. 6, Art. 7 of the Constitution of the Choctaw Nation, among other things directed:

No money shall be drawn from the treasury but in consequence of an appropriation by law. * * * And a regular statement and account of the receipt and expenditures of public monies shall be published annually. (Laws Choctaw Nation 1852-1857. Can be found in Law Division, Library of Congress.)

As stated, the opinion of the Attorney General of the Choctaw Nation, construing the act of 1867, in connection with this article of the constitution, *with reference to the very fund now in question*, was to the effect that the fund should be paid into the treasury of the Nation, and disbursed by the National Treasurer, upon audited accounts, under appropriation regularly and legally made by the National Council.

In connection with this provision of the Choctaw constitution, it is not only interesting to note the high degree of competency for self-government that the Choctaws had attained at this early period, but the well defined purpose of these people to conform their laws to their constitution, for we find in 1857 a most comprehensive system of laws relating to the government of the Choctaw Nation.

This act fully defines the duties of all public officers, among them the Secretary and Treasurer of the Nation. Among other provisions is one that all persons intrusted with public money shall give bond, account, etc. The money of the Nation is safeguarded in the provision relating to the Treasury Department of the Nation; directions being given as to how all public monies should be disbursed, etc. (Acts Choctaw Council 1857, pp. 121-126. Can be found in the Law Division of the Library of Congress.)

The opinion of the Attorney General of the Nation, which was rendered at the request of the Principal Chief, as stated

was with reference to the receipt and disbursement of the money due the attorneys and delegates of 1853, in connection with the net proceeds claim.

It is found in the Senate Report 1878, 49th Congress, 2d Session, pp. 30-31 and here set out.

HARRY PEYTON,
Attorney for Appellants.

JAMES K. JONES,
W. N. REDWINE,
Of Counsel.

The authority here referred to is as follows:

"ADDENDA

Chahta Tamaha, C. N.

November 16, 1867.

Sir:

Your opinion is requested to be given in regard to the bill authorizing the attorney-general to investigate the 'claims of such delegates as well as the amount that may be due their attorneys for fees under certain contracts to have been made with John T. Cochrane, dated February 13, 1855,' etc., whenever an appropriation shall be made by Congress.

Now, can any obstacle be made by legislative act to 'delay or evade' the payment of 30 per cent promised to John T. Cochrane, by due course of investigation intrusted to the attorney-general?

Is not the estate of John T. Cochrane entitled to receive 30 per cent of whatever amount is recovered subject only to the appropriation of general council?

ALLEN WRIGHT,

Principal Chief Choctaw Nation.

HON. SAMSON FOLSOM,

Attorney-General."

"Office National Attorney,

Chahtah Tama Ha. Choctaw Nation,

November 16, 1867.

Sir:

Your note of this date requesting my 'opinion in regard to the bill authorizing the Attorney-General to investigate' the claims of such delegates as well as the amount that may be due their attorneys for fees under certain contracts, etc., 'and as to whether any obstacle' can be made by legislative act to 'delay or evade' the payment of 30 per cent promised to John T. Cochrane by due course of investigation intrusted to the Attorney-General, 'and as to whether the estate of John T. Cochrane is entitled to receive 30 per cent of whatever amount is recovered, subject only to the appropriation of general council.'

My understanding of your wish from the substance of the question you present for my opinion is, in substance, that you wish to be informed as to whether the bill just passed by both houses of the general council, and presented to you for your approval, the second section of which provides, in substance, 'that whenever Congress shall make an appropriation to pay the nation the amount or any part thereof due by virtue of the Senate award, for the net proceeds of land of the nation, sold by the United States, the delegation charged with the prosecution of the demand on behalf of the nation shall at once notify the national attorney of the fact of such appropriation having been made, whose duty it is made to investigate the claims of such delegates and their attorneys under a certain contract said to have been made with John T. Cochrane under date of February 13, 1855, and report the amount he may find to be due to the delegates and their attorneys to the principal chief of the nation, who shall then convene the general council for the purpose of appropriating what he may find and report to be due, etc.

Upon examination of the contract with John T. Cochrane referred to, I find it contains the following stipulation among others: 'There shall be promptly and faithfully paid to said party of the second part (naming Mr. Cochrane) the amount of 30 per centum of every and all such sum or sums of money payable to the said party of the first part, his heirs or assigns, so soon as the same *shall be paid over by the United States to the said Choctaw Nation or its legally authorized representative* without any evasion or delay.

Taking the law and this provision of the contract together, I understand the pith of your inquiries to be whether such law does not in a degree violate the obligation of the contract in this behalf, and thereby *impair it* in the constitutional sense.

Upon reflection and examination of the whole question, I am very clear in the opinion that it does not.

The contract, I find, is between the delegates and John T. Cochrane, and the obligation of it is that the delegates will pay Cochrane 30 per centum of so much as they may receive from the nation for their services; to this they pledge the faith of the nation.

To understand the foundation of the contract we must keep in mind that by the law appointing the delegation who contracted with John T. Cochrane they are entitled to receive 50 per centum of so much as they may recover from the United States for the nation, 20 per cent of which is allowed them for their own services, and 30 to be expended in the employment of attorneys, if necessary; and out of this they agree to pay Cochrane his fees according to the terms of the contract. They have pledged the faith of the nation to their own undertaking.

When the nation recognizes its obligation under such contract, to see Cochrane's fees or the fees of any other attorney whom the delegation may employ paid, it is but proper that she should first ascertain how much is to be paid and to whom.

This I take to be the object and intention of the law now before you, and it strikes me as manifestly proper and just to the nation, as well as to all parties concerned.

The constitution of the Choctaw Nation requires that no money shall be drawn from the Treasury, except by appropriation of the general council, and twelfth article of the treaty of 22d June, 1855, providing for the payment of this 'net-proceeds claim' provides that the money when appropriated shall be drawn upon requisition of the nation, etc.

Conceding the question, then, that when the appropriation is made to pay the 'net-proceeds' claim, the nation is by law required to make a requisition for it, and then appropriate so much of it as may be necessary to pay off and discharge what she may owe the delegation, and each of them, and the attorneys with whom they may have contracted and pledged the faith of the nation for their fees, the question then presents

itself: How is the nation to ascertain these facts, so that she may legislate intelligently, and make appropriations with justice to herself and all parties? The present council, in the law referred to, have, it seems to me, adopted a mode to ascertain these facts. As to the propriety or policy of placing the investigation of the matter in the hands of the national attorney, it does not affect the constitutionality of the law. The general council have, I am of the opinion, full power to exercise their discretion in this behalf.

As to the second inquiry in your note, as to whether 'the estate of John T. Cochrane is not entitled to receive 30 per cent out of whatever is recovered, subject only to the appropriation of the general council,' my opinion is that inasmuch as it is known to the nation that Mr. John T. Cochrane is deceased, and that the services—a part at least that were to have been rendered by him—have necessarily to be rendered by some one else, it is not improper that the nation should have some voice or authority in securing the compensation of such other attorney or attorneys.

Conceding the faith of the nation to be thereto pledged by the delegates, who, it seems from information in this office, have assented to the substitution of Hon. J. S. Black in the place of Mr. Cochrane.

The nation might, it is true, disregard everyone but the legal representatives of Mr. Cochrane under his *will*, and appropriate so much as was found to be due Cochrane by the terms of the contract referred to; but still the amount should first be ascertained.

Upon the whole, I regard the law, to which you call my attention in your note, a politic one. It provides for an investigation of the amount due certain parties under a certain contract by the law officer of the National Government, and for the convening of the general council in extra session, to make appropriation to pay what may be found due; and, to my mind, instead of placing an obstacle in the way of the fulfillment of the contract with Cochrane of February 13, 1855, it tends to bind the nation more fully to the fulfillment of the obligation therein assumed by the

delegation, and to which they pledged the faith of the nation, whether with or without authority. And instead of tending in any degree to 'evade or delay' the performance of the conditions, it tends greatly to expedite and facilitate such performance on the part of the Choctaw Nation with honor to herself, and justice to all parties who may be interested in its provisions.

Very respectfully submitted,

SAMSON FOLSOM,
National Attorney.

His excellency, principal chief of the Choctaw Nation, Allen Wright."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 129.

THE HEIRS OF SAMUEL GARLAND, DECEASED,
Appellants,

v.

THE CHOCTAW NATION,
Appellee.

REPLY BRIEF FOR APPELLANTS.

Replying to Appellee's contentions under the four defences set up, we respectfully submit:

As to *I.* Giving the Act of Congress conferring jurisdiction upon the Court of Claims to "hear and adjudicate" the claim of Samuel Garland against the Choctaw Nation, "and to render judgment thereon in such amounts, if any, as may appear to be equitably due," and further, to render judgment "on the principle of *quantum meruit*" (R., p. 1), a reasonable construction, we submit that the direction to award judgment on

quantum meruit, was rather an enlargement of the scope of the Court's powers than a restriction of them. The real purpose of the Act was to give the heirs of Garland a status in the Court of Claims, that their claim against the Choctaw Nation might be asserted, and the judgment of the Court rendered thereon.

We think that the decision of this Court in *Clark v. U. S.*, 95 U. S., 539, conclusive of the question raised by appellees under their first discussion, pp. 12-15, their brief.

In that case, which was a suit against the United States upon a void contract, and where there was no allegation of implied contract and request for judgment on *quantum meruit*, and no evidence of the value of the services other than the contract, this Court said:

"The forms of pleading in the Court of Claims do not preclude a claimant from what is justly due upon the facts stated in his petition, although there may be no count in the petition upon an implied contract. * * *

"If objected that the petition contains no count upon an implied contract for *quantum meruit*, it may be answered, that the forms of pleading in the Court of Claims are not of so strict a character as to preclude the claimant from recovering what is justly due him upon the facts stated in his petition, *although due in a different aspect from that in which his claim is conceived.*" (Italics ours.)

In this—the *Clark* case,—the only evidence that the value of the use of the vessel was \$150 per day, was the contract. Upon this point the Court said:

"Of course the claimant is entitled to the value of the use of his vessel during the time it was in the

hands of the government agents, which is shown by the findings was the period of eight days. This subject, may be fairly assumed at what was stipulated for in the parol contract. Though not binding or conclusive, it may be regarded as admissible evidence for that purpose. Neither party thought fit to adduce any other. * * * Whether or not it is admissible as some evidence, though not conclusive on either party, is not much discussed. (Referring to certain cases cited), though it seems to us that it may be fairly deduced from the tenor of the cases that the evidence is admissible. At all events that is our view. As a declaration of the parties, it is entitled to some credence."

In the case at bar we have the contract, duly executed by the constituted authorities of the nation, and five times sanctioned by the National Council of the Choctaw Nation. (R., pp. 20, 21, 26, 34, 45.) We also have a recognition of the contract, its legality confirmed, an admission that the services under the contract had been rendered, and the value of the services admitted by an appropriation act of the council. (R., p. 34.) How could the question of *quantum meruit*, "as much as he deserves," be better established than it is by the very admission of the Choctaw Nation, as expressed in these acts of its legislative body! (R. p. p. 45. & 46.)

Counsel for appellees, p. 13, his brief, says: "The Court of Claims finds that the 'alleged' contract was 'found' among the records of the national secretary of the Choctaw Nation."

We wholly fail to comprehend how the "finding of the contract," (which is designated as "alleged") in the office of the national secretary, the place where it should have been lodged, should militate against its value as evidence. With due respect to the Court be-

low and to learned counsel for appellees, we submit that the value of the contract should not be lessened by the suggestion that it is a foundling, which it is not. The contract is before the Court, as well as the various acts of the council confirming it, and its value as evidence can be determined from the record by this Court independent of the finding of the Court of Claims. On p. 13, his brief, counsel for appellants says: "Assuming that the nation was obligated to pay 20 per cent of the recovery to the delegates, no just distribution of that amount would give to the heirs of Samuel Garland one-fourth."

The Act appropriating 20 per cent of the recovery named the delegates of 1853, and it was for their services in prosecuting the net proceeds claim. (R., p. 34.)

When Leflore and McCurtain made their abortive distribution of the fund, they recognized the *several* claims of the heirs of only four of the original delegates, viz: P. P. Pitchlyn, I. Folsom, Samuel Garland, and P. Folsom. (R., p. 38.) The claim of Dixon Lewis, one of the original delegates, who died early in the time of the first prosecution of the claim, was settled by appropriation to his heirs on October 1, 1860. (R., p. 24.)

That they were not appointed as successors to the original delegates, in the sense that they were entitled to receive fees under the contract, is evidenced by the so-called settlement of Leflore and McCurtain, R., p. 38, where their services are compensated for upon a yearly base of service. The fact stands out that the only persons entitled to distribution under the appropriation act *and the contract*, were the four delegates above named. Leflore paid to himself \$20,000 for four years' service, and \$13,750 "for services and money furnished before he was commissioned delegate"; and to Mc-

Curtain \$5,000 for one year's service, upon the same theory that these services were expenses against the money appropriated to pay the delegates of 1853, as that upon which other disbursements were made from the fund, notably \$1,500 to Dukes for "sympathy" as found by the Court below, as well as other illegal payments made to members of the council and lobbyists. (R., p. 58.)

Referring to the services rendered by the original delegates, counsel for appellants, p. 14, his brief, says: "Congress made no appropriation except the \$250,000, which had been paid. It had provided no Court in which the claim could be adjudicated. This was not done until 1881. *The bulk of the services, therefore, were for which the 20 per cent was paid were rendered after Garland's death.*" (Italics ours.)

With due respect to learned counsel for appellants, we submit that the record does not bear out this contention. Up to the point of reaching a settlement of the claim with the government, and reaching an adjustment in the amount of the indebtedness (which was taken, to the cent, by this Court as the basis for the final judgment that was rendered), the delegates of 1853 performed *all* the services. (Fdg. I, p. 18, R.)

Counsel was employed in 1853, in 1870, and finally Luce was employed in 1881, to assist the delegation in the prosecution of the net proceeds claim. (Fdg. IV, pp. 27, 29.)

Under the employment of Luce by Folsom, the suit in the Court of Claims was filed in 1881. Judgment was rendered in this Court at the October term, 1886.

Up to the date of the institution of the suit, *all work* in connection with the net proceeds claim had been done by the original delegates. They had come to Washing-

ton in 1853, negotiated the treaty of 1855, which acknowledged the indebtedness of the United States to the Choctaw Nation for the proceeds of the lands of the Choctaws that had been sold by the United States. They prosecuted the claim through the Interior Department; under reference of the same by the Senate; and again in the Senate under the award, finally securing an award from the Senate of a sum as the amount due by the United States to the Choctaw Nation upon the net proceeds claim, which award was accepted by this Court in awarding final judgment in the case. (119 U. S., p. 1.) Further services, after securing the appropriation of \$250,000 in 1861, were in abeyance until after the close of the Civil War, but immediately thereafter we find the delegation in Washington seeking payment of the claim, and finally, P. Folsom, after securing the jurisdictional act, employed Luce, as associate counsel, to assist in the prosecution of the case in the Court of Claims. From that date, until about 1885 or 1886, no delegate was appointed to succeed the original delegates, although all of the original delegates had died. About the date of the rendition of the judgment Leflore was appointed, and about the time of the payment of the judgment, McCurtain was appointed.

The facts shown by the record are that *all* service, up to the point of determining the liability of the government to the Choctaw Indians in the net proceeds claim, were performed by the original delegates, save Lewis, who had died prior to 1860, and who had been succeeded by P. Folsom.

All other services, in the enforcement of this liability, were performed by the attorneys employed by the

Choctaw Nation or employed by the delegates, for which a separate contract was made as to payment for such services, and such contract recognized by payment to the attorneys of 30 per cent of the recovery. (R., p. 29.)

Other than to collect the money due the delegates of 1853, and incidentally appropriate most of it, along with paying it out in the redemption of promises made to members of the council, and to lobbyists in securing legislation, whereby this fund was diverted from the national treasury, and into their hands, without bond or accounting, nothing is shown to have been done by Leflore and McCurtain.

We therefore submit there is no ground for the contention that the "bulk of the services" in and about the prosecution of the net proceeds claim was rendered after Garland's death.

As to *II*. The ~~re~~ contention here made is replied to under the discussion *I*.

As to *III*. We submit that by every act of the Choctaw Council the rights of the delegates were considered as several. The Act of 1870, passed at a time when it was expected that the Senate award would be paid, provided that the money due the attorneys and delegates should be paid into the national treasury, and that the sum due the delegates should be paid to them or *their representatives* (R., p. 20).

Their rights were treated as several by Leflore and McCurtain in their proposed settlement. (R., p. 38.)

The rights of Lewis were recognized as several, in the appropriation made to his heirs in 1860. (R., p. 24.)

As to *IV*. The effect of the repeal of the laws of the Choctaw Nation, the conflict of such repealing laws

with the Constitution of the Choctaw Nation and the Constitution of the United States as the same relates to the impairment of the contract rights of appellee under those constitutions, and the methods employed by Leflore and McCurtain in securing such repealing legislation, is fully discussed in our original brief. In that connection, see *Crain v. U. S.*, 25 C. Clms., 204.

HARRY PEYTON,

JAMES K. JONES,

W. N. REDWINE,

Attorneys for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE HEIRS OF SAMUEL GARLAND, Deceased, Appellants, v. THE CHOCTAW NATION, APPELLEE.	} No. 129.
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APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

This case comes here by appeal from the judgment of the Court of Claims dismissing a petition filed by the heirs of Samuel Garland, deceased, against the Choctaw Nation, seeking to recover compensation for services rendered under an alleged contract.

The suit was based upon section 5 of the act of May 29, 1908 (35 Stat., c. 216, p. 445), which is as follows:

That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to ren-

der judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation.

THE PETITION.

Under the authority of the above act of Congress the petition in this case was filed. In substance, it alleges:

1. That on November 9, 1853, there was created by the Legislative Assembly of the Choctaw Nation a delegation authorized and empowered to settle all of the unsettled business between the Choctaw Nation and the United States and composed of Samuel Garland, P. P. Pitchlynn, Israel Folsom, and Dixon W. Lewis. A copy of the resolution creating the delegation was attached as Exhibit A. It authorized the delegates to settle and dispose of, by treaty or otherwise, every claim and interest of the Choctaw people against the Government of the United States and provided "that in case of resignation or death of any of the said delegation above mentioned the chiefs have the power to appoint any person

to fill such vacancy in his district." (Rec., pp. 1, 11-12.)

2. That on June 22, 1855, a treaty was entered into by the delegation and the United States Government by which certain questions were submitted for adjudication to the Senate of the United States. These questions were:

First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States, by the treaty of September the twenty-seventh, eighteen hundred and thirty, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws to the lands remaining unsold, in order that a final settlement with them may be promptly effected; or

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much? (Rec., pp. 1-2.)

3. That after the negotiation of the treaty and on November 21, 1855, the following contract with respect to compensation to the delegation was entered into, namely:

We, the undersigned chiefs, do hereby agree that the delegation, viz, Samuel Garland, P. P. Pitchlynn, Israel Folsom, and Dixon W. Lewis, shall receive twenty per cent upon all claims arising or accruing to

this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that said delegation are to receive no fees for the lease money nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty. (Rec., p. 3.)

This paper was signed by certain chiefs of the Choctaw Nation, and below their signatures appears, unsigned, the following:

Given this the 21st day of November, 1855. Approved as required by the third section of the schedule of the Constitution this the 18th day of October, 1868. (Rec., p. 3.)

4. That pursuant to the terms of the treaty a statement was submitted to the Senate of the United States, together with supporting evidence, which statement Samuel Garland "prepared and assisted in preparing" and "presented and assisted in presenting the matter before the Senate," and as a result the Senate passed a resolution allowing the Choctaws the net proceeds of the sales of certain lands claimed by them which had been sold by the United States up to January 1, 1859, and called on the Secretary of the Interior for an account stated; that the Secretary of the Interior caused an account to be stated showing that the United States was indebted to

the Choctaw Nation in the sum of \$2,981,247.30 (Rec., pp. 3-4), and that by act of Congress of March 2, 1861, there was paid to the Choctaw Nation \$250,000 on account for the amount found due by the Senate. (Rec., p. 4.)

5. That thereafter the right of the Choctaw Nation to the payment of the further amounts due from the United States was prosecuted in the Court of Claims and the Supreme Court of the United States by Samuel Garland and the other delegates during the lifetime of said Garland (although it appears in another part of the record that Samuel Garland died in 1870 and that the act of Congress authorizing a suit in the Court of Claims was not passed until March 3, 1881), and a judgment was rendered by the Court of Claims and affirmed by the Supreme Court on November 15, 1886 (119 U. S. 1), for the sum of \$2,981,247.30, subject to a deduction of the \$250,000 previously paid (Rec., p. 4), and that on June 29, 1888, Congress appropriated \$3,078,371.23 in payment of this judgment and accrued interest.

6. That on February 25, 1888, Samuel Garland and the other delegates having previously died, the General Council of the Choctaw Nation passed a resolution authorizing the principal chief of the nation to make requisition upon the proper authorities of the United States "for the payment to Campbell LeFlore and Edmund McCurtain, as delegate successor to P. P. Pitchlynn, Samuel Garland, and others, or to their order, the sum of twenty per cent

of whatever may be appropriated by Congress in payment of the judgments of the Court of Claims in favor of the Choctaw Nation rendered on the 15th day of December, 1886, and in addition thereto the sum of twenty-three thousand three hundred and ninety-five and 39/100 dollars," the said sum of \$23,095.39 being intended to refund to Samuel Garland and the other delegates expenses for and on behalf of the Choctaw Nation, which had not been refunded, according to a settlement alleged to have been made by the Choctaw Nation November, 1861. (Rec., pp. 5-6.)

7. That, pursuant to this resolution, the total amount paid to Campbell LeFlore and Edmund McCurtain was \$638,919.43, and that the appointment of LeFlore and McCurtain was without the consent of Samuel Garland or any person authorized to act for his estate, and that they were appointed by the Choctaw Nation as its agents to collect the amount due the delegation from the United States for services performed and rendered by them.

8. That the heirs of Samuel Garland were entitled to receive one-fourth of the amount collected, or \$159,729.85, but that LeFlore and McCurtain paid to them only \$43,943.20, leaving an unpaid balance of \$115,786.65, for the recovery of which, with interest at the rate of five per cent from August 12, 1889, this suit was brought.

9. That the Choctaw Nation had never denied its liability for the above amount, but that there

was no court in which a suit to enforce its collection could be brought until the passage of the act of May 29, 1908, cited above, and conferring jurisdiction upon the Court of Claims. (Rec., pp. 8-9.)

10. That Samuel Garland left a will by which his interest in this claim passed to his widow, and that upon her death it passed to the parties bringing this suit, who were his children and grandchildren. (Rec., pp. 10-11.)

Beyond what is stated above, there is no allegation as to the nature and extent of the service rendered by Samuel Garland up to the time of his death in 1870, nor is there any allegation that the services rendered were reasonably worth the amount sued for or more than the amount which it is admitted has been paid. The substance of the petition is that Samuel Garland was appointed as one of the delegates empowered to act for the Choctaw Nation; that the nation contracted to pay him one-fourth of twenty per cent of the amount recovered; that through its agents the Nation collected and undertook to distribute the amount contracted to be paid to the delegates, and only paid to the heirs of Samuel Garland a part of the amount due them. The suit, as distinctly stated in the petition, is one to enforce an alleged contract.

FINDINGS OF FACT.

I. After the passage of the resolution of November 9, 1853, above referred to, the delegation went

to Washington and began negotiations for the settlement of all claims which the Nation had against the United States, and as a result the treaty of June 22, 1855, submitting the claims of the Choctaw Nation to the Senate of the United States, was entered into, and on November 19, 1855, it was ratified by the General Council of the Choctaw Nation. (Rec., p. 18.) The first action taken thereafter by the Government of the United States was the resolution passed by the Senate on March 9, 1859, allowing the Choctaws the net proceeds of the sale of certain lands and directing the Secretary of the Interior to cause an account to be stated. This account was stated and on March 2, 1861, Congress made an appropriation under which \$250,000 was paid on account of these claims. (Rec., pp. 11-12, 18.) There is no finding as to just what the delegates, and particularly Samuel Garland, had done in the meantime, or just what service they had rendered. That they had done anything can only be inferred from the fact that various resolutions had been passed by the General Council of the Choctaws directing them to proceed with the business and appropriating money to pay their personal expenses. In November, 1854, they were directed by resolution to remain at Washington and continue to press to final settlement all claims of the Choctaws against the Government. This was before the treaty had been entered into. On November 4, 1857, they were instructed to proceed to Washing-

ton as soon as practicable and given full power to urge a speedy conclusion of all matters of unsettled business arising under the treaty. (Rec., p. 21.)

Money to pay their personal expenses was appropriated as follows: \$2,000 to P. P. Pitchlynn, \$2,000 to Samuel Garland, \$2,000 to Israel Folsom, and \$2,000 to such person as the governor may appoint to fill the vacancy, Dixon W. Lewis having died; in 1858, \$2,000 to Pitchlynn, \$2,000 to Israel Folsom, \$2,000 to Peter Folsom, and \$5,000 to Samuel Garland, the latter amount to enable him to settle with Thompson McKinney, who, a report of a special committee of the council said, would thereby release the Nation from any claim on his part for attending to arrearages of annuities; in 1859, \$2,000 each to Pitchlynn, Israel Folsom, and Samuel Garland, to enable them to proceed to Washington to effect the appropriation necessary to complete a settlement; in 1860, \$2,000 each to Pitchlynn, Israel Folsom, and Samuel Garland. In the resolutions making these appropriations the amounts appropriated were recited as advances. By another act \$2,000 was appropriated to the heirs of Dixon W. Lewis "for his pay as delegate to Washington City from the nation." (Rec., pp. 21-24.)

II. From a resolution passed by the General Council of the Choctaw Nation on February 25, 1888, it appears that on November 18, 1861, some kind of a settlement was made, as a result of which there was found due the delegation a balance of

\$23,395.39. Just what was done after this time by the delegates or what service was rendered by them does not appear, except that numerous resolutions were passed by the general council of the nation purporting to recognize the alleged twenty per cent contract and ratifying other contracts by which attorneys employed to prosecute the claims were to be paid thirty per cent of the recovery.

III. No further action appears to have been taken by Congress until March 3, 1881, when an act was passed conferring upon the Court of Claims jurisdiction to try all questions of difference arising out of treaty stipulations and to render a judgment. A suit was then instituted in the Court of Claims, a judgment obtained after an appeal to this court, upon which there was paid \$3,078,311.23. (Rec., p. 19.)

IV. When this judgment was recovered all of the original delegates had died, and Campbell LeFlore and Edmund McCurtain had been appointed their successors. Accordingly a resolution of the general council of the Choctaw Nation, passed February 25, 1888, directed that twenty per cent of the amount appropriated by Congress be paid to LeFlore and McCurtain, "delegates and successors to P. P. Pitchlynn and other delegates of 1853, to enable them to pay the expenses and discharge the obligation in the prosecution of said claim and to settle with the respective distributees of said delegation," and in addition the sum of \$23,395.39 was appropriated as the balance

due the delegation under the settlement of November 18, 1861. (Rec., p. 20.) Section 3 of the resolution was as follows:

Be it further enacted, That the said sums shall be paid to Campbell LeFlore and Edmund McCurtain, delegates of the Choctaw Nation, successors to P. P. Pitchlynn and others, and where so paid shall be accepted as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract. (Rec., p. 21.)

The same resolution appropriated thirty per cent of the recovery to pay the fees of the attorneys who had been employed. (Rec. pp. 20-21.)

V. Out of the amount received by them LeFlore and McCurtain paid to the heirs of Samuel Garland approximately sixty thousand dollars. (Rec., p. 37.)

VI. LeFlore and McCurtain submitted to the General Council a report of their disbursements. This report is not entirely intelligible. It shows, however, that a large amount was disbursed to meet obligations which had been incurred by the delegation. It also shows that in the amounts paid to the distributees of the various delegates there was included \$5,000 per year for the services and personal expenses of each delegate for each year when he actually rendered service after the settlement of 1861, Samuel Garland being allowed \$10,000 for the years 1866 and 1869. (Rec., pp. 38-42.) Since the court found that the amount

paid to the heirs of Samuel Garland was approximately \$60,000, they received \$10,000 for the two years in which he was assumed to have rendered services and, in addition, approximately \$50,000.

BRIEF.

I.

THE ONLY JUDGMENT THAT CAN BE RENDERED IN THIS CASE MUST BE BASED "ON THE PRINCIPLE OF QUANTUM MERUIT FOR SERVICES RENDERED AND EXPENSES INCURRED."

The only jurisdiction which the Court of Claims had in this case was that conferred by section 5 of the act of May 29, 1908. (35 Stat., c. 216, p. 445.) This section confers jurisdiction to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland and to render judgment thereon "in such amounts, if any, as may appear to be equitably due." It provides, however, that the judgment is "to be rendered on the principle of quantum meruit for services rendered and expenses incurred."

At the time this act was passed the heirs of Samuel Garland were claiming, as they are now, that the Choctaw Nation had made a contract to pay twenty per cent, and that they were entitled to one-fourth of that amount. They had succeeded at one time in getting the General Council of the Choctaw Nation to pass an act providing for payment to them on that basis, but this act had been vetoed by the principal chief, and there-

fore did not become effective. (Rec., pp. 7-8.) The claim was so inequitable on its face that Congress could not have recognized it as a valid obligation on the part of the Choctaw Nation. The Court of Claims finds that the alleged contract was found among the records in the office of the national secretary of the Choctaw Nation in 1892. (Rec., p. 19.)

Assuming that the nation was obligated to pay twenty per cent of the recovery to the delegation, no just distribution of that amount would give to the heirs of Samuel Garland one-fourth. The services rendered by the delegation consisted of negotiating a treaty and then adjusting and settling the claims of the nation under that treaty. The resolution appointing the delegation contemplated that it should be a continuing body, and hence provided for the filling of vacancies that should occur. Garland was one of the original delegates and may be assumed to have done his part in negotiating the treaty which was concluded in 1855. It may also be assumed that he continued to render services up to 1861, when the Senate fixed the basis upon which settlements should be made. During this period, however, he was advanced the money to pay his personal expenses. On a settlement made in 1861 a balance of some \$23,000 appears to have been found to be due the delegation for expenses incurred on behalf of the nation, but what, if any, part of this had been advanced by Garland does not appear. It may be

assumed also that he continued to render some service up to the time of his death, which occurred in 1870. At that time, however, but little had been accomplished toward the settlement of the pending claim. Congress had made no appropriation except that of \$250,000, which had been paid. It had provided no court in which the claims could be adjudicated. This was not done until 1881. The bulk of the services, therefore, for which the twenty per cent was paid were rendered after Garland's death. If, therefore, the nation was bound to settle separately with each of the delegates, there is no principle of justice upon which Garland's heirs could claim one-fourth merely because he was one of the original delegates. This would exclude any of the delegates subsequently appointed from participating in the amount to be paid by the nation. Congress, therefore, wisely and deliberately ignored all questions of contract and authorized the Court of Claims to render such judgment as would provide just compensation for services actually rendered and expenses incurred by Garland. The act expressly excludes the idea of allowing compensation on the basis of a contract. The jurisdiction of the court is, in express words, limited to rendering a judgment on the basis of quantum meruit. There is, therefore, no jurisdiction to determine whether there was a contract between the Choctaw Nation and its delegates or to enforce such a contract if it did exist.

II.

**THE PETITION SEEKS THE ENFORCEMENT OF AN
ALLEGED CONTRACT.**

Notwithstanding the express limitation upon the jurisdiction of the court, the petition ignores all question of the value of services rendered or the amount of expenses incurred and seeks only to enforce the terms of an alleged contract. The theory is that the Choctaw Nation had agreed to pay Garland and three others twenty per cent of the recovery; that Garland was entitled to one-fourth; and that the nation has, in fact, paid him less than his one-fourth. To state a case based on quantum meruit, it was necessary, in general terms at least, to set out the services actually rendered and the value of such services. This the petition does not do. On the contrary, there is no effort to allege what Garland did and not a single allegation as to the value of these services or as to the amount of money he advanced as expenses.

It would seem clear that under a statute authorizing a judgment on a quantum meruit no judgment can be rendered on a petition which seeks to recover merely upon the ground of a contract.

III.

**THE FINDINGS OF FACT FURNISH NO BASIS FOR A
JUDGMENT BASED ON A QUANTUM MERUIT.**

If it can be said that, although the petition proceeds on the theory of a contract, it would still be competent to render a judgment without regard to

a contract for the value of services rendered, the judgment in this case is correct. It is impossible to ascertain from the findings of fact any specific service rendered by Garland. Indeed, the fair inference is that from 1861 until his death he was not continuously engaged in the business of the nation. The delegates who distributed the twenty per cent in their report stated, by inference at least, that during this period he was only actually engaged for two years. Prior to that time he had been advanced several thousand dollars for his personal expenses. Not only do the findings of fact not show what services were rendered but they utterly fail to state anything from which the value of such services could be determined. It is not shown that he ever at any time advanced any money or incurred any expenses which were not fully covered by the appropriations made to him for that purpose. It is not shown that he had advanced any part of the \$23,000 of expenses found to be due by the settlement of 1861. There is, in fact, nothing in the record upon which any court could base a judgment as to the value of his services. Even if the act of 1908 could be construed as authorizing a judgment for his equitable share of the twenty per cent which was paid, no judgment could be rendered in this case. Such a judgment, of course, would have to be based upon a comparison of the services rendered and expenses incurred by the various delegates during the terms of their service; and since there has been no effort

to show either these services or these expenses, there could be no judgment in favor of Garland's heirs.

IV.

**THE CHOCTAW NATION WAS NOT RESPONSIBLE FOR THE
PROPER DISTRIBUTION OF THE TWENTY PER CENT
AMONG THE DELEGATES.**

Even if it could be said that the Choctaw Nation was bound to pay to the delegation twenty per cent, the payment to the delegation as it was composed in 1888 of that amount would be a full discharge of the obligation. The Court of Claims correctly held that the contract to pay the twenty per cent, if it was made, was not a separate contract with the individual members of the delegation, but with the delegation as a body, and therefore that the nation was within its rights when it provided, as above shown, that the payment to this delegation should be in full discharge of its obligation. The resolution creating the delegation provided for the filling of vacancies as they occurred, thus clearly expressing the purpose that the delegation should be a continuing body. The alleged contract was with this body, and any obligation that it imposed was an obligation extending to the delegation as either then or thereafter composed. The delegation recognized this, and, from time to time, appointed its business manager. (Rec., p. 47.) Through this business manager it

contracted obligations to be paid out of the twenty per cent to be finally paid to it. The delegation as a whole undertook the work for which compensation was to be made. The conduct of the business would necessarily in the end require an accounting and settlement among themselves. The nation assumed no obligation to make this settlement.

Accordingly, when the money was recovered, it paid to the successors of the original delegation the full twenty per cent. The distribution of that fund was a matter between the delegates receiving it and the distributees of those delegates who had died. If the account rendered was not correct, those receiving less than their share would have a right of action against those making a wrongful distribution, but not against the nation, which had discharged its full obligation. The allegation of the petition that the delegates who made the distribution were mere agents of the nation is not sustained by the record. They were appointed as delegate successors of the original delegates and were so described in the act directing the money to be paid to them.

V.

In conclusion, it is respectfully submitted that, in any view of the case, it is impossible to say from this record that the services rendered and expenses incurred by Samuel Garland were worth more than

approximately \$60,000, which the Court of Claims has found was paid to his heirs.

It is respectfully submitted that the judgment is correct and should be affirmed.

WILLIAM L. FRIERSON,
Solicitor General.

NOVEMBER, 1920.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 129.

THE HEIRS OF SAMUEL GARLAND, DECEASED,
Appellants,

v.

THE CHOCTAW NATION,
Appellees.

**MEMORANDUM UPON QUESTION OF RIGHT OF
APPEAL.**

Section 182 of the Judicial Code provides:

“In any case brought in the Court of Claims under any Act of Congress by which the court is authorized to render a judgment or decree against the United States, or against any Indian tribe or against any Indians, or against any fund held in trust by the United States for any Indian tribe or

for any Indians, the claimant, or the United States, or the tribe of Indians, or other party in interest shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein provided." (36 Stat. L., 1142.)

This memorandum is submitted in response to the direction of the court made at the hearing. We think that it authorizes the appeal in the instant case.

Respectfully submitted,

HARRY PEYTON,
Attorney for Appellant.

Syllabus.

HEIRS OF GARLAND, DECEASED, *v.* CHOCTAW NATION.

APPEAL FROM THE COURT OF CLAIMS.

No. 129. Argued January 12, 1921.—Decided June 1, 1921.

The Choctaw Nation constituted four persons a delegation to represent it in pressing money claims against the United States, promised them a percentage for their services rendered and to be rendered, and, when an appropriation was secured from Congress as a result of many years of negotiations and proceedings during which the delegates were succeeded by others, passed an act appropriating the agreed percentage out of the fund held by the United States, with a direction that it be paid to the two existing delegates, as successors of the preceding delegates, to enable them "to pay the expenses and discharge the obligation in the prosecution of said claim, and to settle with the respective distributees of said delegation," the act further declaring that payment to the two delegates should be accepted as a complete payment and final discharge of all obligations of the Choctaw Nation to the delegation and as a full and final settlement of the amount due under its contract. Upon these and other subsidiary facts,—

Held: (1) That the obligation of the Choctaw Nation was to the delegates individually and not to the delegation as a body, and that the two existing delegates, in collecting and disbursing the money, were agents of the Nation merely, so that its payment to them did not discharge the Choctaw Nation's obligation to the heirs of a former delegate who had rendered part of the service. P. 444.

(2) That while, under the act authorizing this suit (May 29, 1908, c. 216, § 5, 35 Stat. 444, 445), any right of such heirs to recover on account of service and expenditures by their ancestor must be determined not upon his contract but upon the principle of *quantum meruit*, a petition alleging valuable services should not be rejected upon the technical ground that it asserted and relied upon the contract. P. 445.

54 Ct. Clms. 55, reversed.

THE case is stated in the opinion.

Mr. Harry Peyton, with whom *Mr. James K. Jones* and *Mr. W. N. Redwine* were on the briefs, for appellants.

The Solicitor General for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This suit is based, as its ultimate foundation, on an Act of Congress of May 29, 1908, c. 216, § 5, 35 Stat. 444, 445, which provides as follows:

"That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation."

The case is not easily stated, though simple in ultimate resolution. It turns upon the relation of Samuel Garland and his right to compensation as one of the delegation of the Choctaw Nation to procure for the Nation a recognition and payment of money due from the United States in settlement of or in payment for lands east of the Mississippi River ceded to the United States under certain treaties. The case as made by the petition is this: Samuel Garland was a member of the Choctaw Tribe of Indians and in 1853 he, with three others, were created a delegation and authorized to settle all unsettled business between the Choctaw Nation and the United States. In

1855 the Chiefs of the Nation agreed to pay the delegation, naming them, twenty per cent. upon all the claims arising to the Nation or individuals for their services in negotiating the treaty and for other services which were to be rendered thereafter in Washington.

In pursuance of this authority they entered into negotiations with the United States for settlement of the controversies concerning what, if anything, was due on account of matters growing out of certain treaties (they are set out in the petition) and for the payment for lands ceded to the United States by the Choctaws.

The result was the direction by an Act of Congress (1888, 25 Stat. 239) of the payment to the Choctaw Nation of the sum of \$2,858,798.62 in satisfaction of a judgment of the Court of Claims in favor of the Nation.

On February 25, 1888, the Nation, on account of the death of Samuel Garland, and for the purpose of paying his estate and the other members of the delegation, appointed Campbell LeFlore and Edmund McCurtain agents of the Nation to make requisition upon the United States for the amount due Garland and the other delegates for the services rendered the Nation, and for moneys expended by them. Twenty per cent. of the amount appropriated by Congress to pay the judgment of the Court of Claims was the amount fixed to be paid.

The appointment of LeFlore and McCurtain was without the consent of Garland's estate or the consent of his heirs.

LeFlore and McCurtain collected from the United States \$638,919.43, the same being twenty per cent. of the judgment of the Court of Claims, and were charged with the duty of distributing the same equally.

In 1889 they paid to the heirs of Garland \$43,943.20, but refused to pay the balance due amounting to \$115,786.65.

The Nation has never denied the indebtedness to the

estate of Garland but recognized it by an act passed by its General Council in 1897 and authorized its payment by warrants issued by the national auditor.

The act was vetoed for the reason that it would exhaust the available funds in the treasury of the Nation and force the closing of the Choctaw schools. The estate having no power to sue the Nation, could not do so until authorized by an act of Congress.

The petition sets forth the respective interests of the heirs of Garland.

The Court of Claims found some of these facts but found other facts and concluded from them that the contract of the Nation was with the delegates as a body and that the Nation was not responsible for any failure on the part of LeFlore to pay the estate of Garland all that was due Garland. In other words, the court held that LeFlore and McCurtain were not the "'agents' of the Choctaw Nation, for whose misapplication of the fund, if they did misapply it, the Nation was liable," but that they were when dealt with "the delegation, the successors of the original delegation, standing in such relation to the Nation and to other members of the delegation or their beneficiaries that the payment made to them as it was made, is to be held an acquittance of the nation."

The conception of the opinion is that the delegation was a unit, constituted such and intended to act as such, the survivors or even the survivor of those appointed succeeding to the powers and rights of deceased delegates, that the Nation so regarded and so dealt with them, and that, therefore, LeFlore and McCurtain succeeded to the rights of the delegation, could receive the powers conferred upon them by the enactment of February 25, 1888, and could accept any sums that came to them under that enactment "as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to" the delegation under the contract of 1853.

This being the conception of the court its final conclusion was, that the payment made to LeFlore and McCurtain served to discharge the Nation from any further liability to the delegation or any member thereof or their representatives, and on that ground it ordered the case to be dismissed.

As we have seen, there was a delegation constituted, and Garland was a member of it, and its compensation was agreed to be "twenty per cent. upon all claims arising or accruing to" the "Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington." It will be observed there was no disposition of the amount that might be received, nor distribution of it nor of the services that might be required to be performed, nor designation of who was to receive or control it.

Delegates, however, died and others were appointed in like generality, and finally there was a concentration in LeFlore and McCurtain, and, the National Council, reciting that the delegates preceding LeFlore and McCurtain had recovered from the United States \$2,858,798.62, and that the delegates were entitled to twenty per cent. of the amount, that percentage was appropriated out of the fund and directed to be paid to LeFlore and McCurtain as delegates and successors of the delegates of 1853, "to enable them [LeFlore and McCurtain] to pay the expenses and discharge the obligation in the prosecution of said claim [the claim of the Nation against the United States], and to settle with the respective distributees of said delegation."

There was also an appropriation for other sums due the delegation and it was enacted that all of the sums should be paid to LeFlore and McCurtain, describing them as successors to the other delegates and when so paid to be accepted "as a complete payment and a final

discharge of all debts and obligations of the Choctaw Nation to said delegation" under the contract of their appointment. And it was enacted that the amounts provided to be paid should "be accepted as full and final settlement of the amount due under their respective contracts" and the remainder of the amount appropriated by Congress should be retained in the Treasury of the United States, subject to the legislation and requisition of the Nation.

In 1873, however, there was recognition of liability to the delegates and it was provided that the National Treasurer be authorized to receive the appropriation and to pay (among other obligations) "20 per cent of such appropriation for the delegates of 1853 and 1854, to enable them to discharge all liabilities and obligations under said contracts [there were other contracts than that with the delegates] and all expenses necessarily incurred in recovering said claim." It was provided that all just debts due the Nation from the delegation should first be deducted.

The enactment of 1888 was a deputation to LeFlore and McCurtain to collect and disburse the congressional appropriation, and they became for that purpose the agents of the Nation, not the agents of the delegation, and it was the first deputation of that power. By a prior enactment the payments made to the delegation were from the National Treasury, and another (1867) provided for such payment. In other words, until the enactment of February 25, 1888, the control of the appropriation was in the Nation and payments out of it by the Nation.

Our conclusion, therefore, from the record, is not that of the Court of Claims. There was implication, at least, of liability to the delegates individually. And this was the understanding of the delegates. LeFlore so understood it and the payment made to Garland's estate was a recognition of it. The payment is distinctly in opposition

to the contention of the Government and the conclusion of the Court of Claims. Both the contention and conclusion assert a unity in the delegation, the rejection of any individual payment or reward to the delegates, a time limit upon compensation for their services, however great or effective, a kind of *jus accrescendi* in the successors of deceased delegates. If such right existed at all, it would have existed even though the succession had come a moment before the congressional appropriation was made, and no services whatever rendered by the successors of deceased delegates.

And these views must have impressed Congress, and induced its enactment authorizing suit against the Choctaw Nation. Not, it is true, upon the contract, because other services than Garland's were rendered in procurement of the appropriation and should be considered, and Congress therefore required the judgment in the suit "to be rendered on the principle of quantum meruit" for what Garland did and expended.

It is objected, however, that the suit was not asserted or prosecuted on that basis and that there is no description of the services of Garland or their value, and therefore no elements for a judgment established, such as the statute authorized. It authorized, the explicit contention is, a judgment on a quantum meruit, and that therefore "no judgment can be rendered on a petition which seeks to recover merely upon the ground of a contract."

The contention under the facts disclosed in the petition is technical. The petition showed services rendered and, if the petition be true, valuable services—and for them there should have been recovery if the Nation was liable, and we think it was. How much we do not say nor did the Court of Claims consider, it being of opinion that the Nation was not liable for anything. Upon the return of the case it may determine the amount due Garland, if

Counsel for the United States.

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anything, dependent upon what his services contributed in securing the congressional appropriation.

The judgment of the Court of Claims must therefore be reversed and it is so ordered.

Reversed.

MR. JUSTICE McREYNOLDS and MR. JUSTICE CLARKE took no part in the consideration and decision of this case.
